

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

BASS ENTERPRISES, LLC and  
PHILLIP WAYNE BASS,

Plaintiffs,

v.

PENNSTAR, LLC, et al.

Defendants.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Case No.: CV-2014-900196

CIRCUIT COURT  
BALDWIN COUNTY, AL

FILED

SEP 15 2017

JODY W. CAMPBELL  
CIRCUIT CLERK

AFFIDAVIT OF LINDSEY C BONEY, III

STATE OF ALABAMA:

COUNTY OF MOBILE:

1. My name is Lindsey C Boney, III. I was retained by Bass Enterprises and its counsel to review the purchase of the Nolte property, along with other real estate transactions and events. I am a certified public accountant and certified fraud examiner.

2. The chart attached hereto as Exhibit A summarizes the flow of money on the day of the closing of the Nolte property based on the HUD-1 Settlement Statements, Bay Title's bank records, and financial records produced by the parties. The chart attached hereto as Exhibit B summarizes the flow of money before and on the day of the closing of the Nolte property based on the HUD-1 Settlement Statements, Bay Title's bank records, and financial records produced by the parties.

3. The chart attached hereto as Exhibit C summarizes the corporate relationships among the Defendants.

4. The chart attached hereto as Exhibit D summarizes the corporate relationships among certain non-parties.

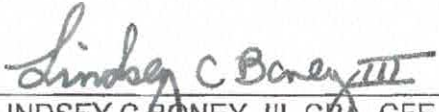
5. The HUD-1 Settlement Statements related to the purchase of the Nolte property are attached hereto as Exhibit E. Pennstar produced Bates nos. 21A-22A, 23A-24A, 25A-26A, 27A-28A and Bass Enterprises produced Bates no. 93-94.

6. The Warranty Deed from Hopper Land Development South, LLC to Pennstar, LLC and Bass Enterprises, each owning a ½ undivided interest, as tenants in common, is attached hereto as Exhibit F. The Warranty Deed from the Nolte family to Hopper Land Development South, LLC is attached hereto as Exhibit G.

7. The purchase contract between the Nolte family and Bill Springer and Michael Weiss is attached hereto as Exhibit H. The assignment of the purchase contract and amended assignment is attached hereto as Exhibit I.

Further Affiant sayeth not.

Dated this 14th day of September, 2017.

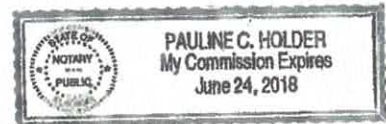
  
LINDSEY C BONEY, III, CPA, CFE, CVA

Sworn and subscribed before me on this 14<sup>th</sup> day of September, 2017.

Pauline C. Holder

Notary Public

My Commission Expires: \_\_\_\_\_





**Nolte Family  
(Grantor)**

**Hopper Land Development  
South, LLC  
(Grantee)**

**\$2,440,125.65  
Deposit**

**Bay Title Closing  
File  
#BTG-0509-11139**

1. \$5,340.00 Check #533500  
Bay Title Insurance Company
2. \$2,459.00 Check #533501  
Bay Title Insurance Company
3. \$65.00 Check #533502  
David P. Slepian, P.C.
4. \$302,100.00 Check #533505  
H. C. Schmieding Produce, Inc.
5. \$369.60 Check #533506  
James P. Nix Revenue Commissioner
6. \$5,695.00 Check #533507  
Survey Concepts
7. \$44,179.01 Check #533508  
U. S. Dept. of Agriculture
8. \$141,968.70 Check #533509  
U. S. Dept. of Agriculture
9. \$146,400.00 Check #533510  
Exit Realty
10. \$500.00 Check #533511  
Exit Realty
11. \$1,758,842.34 Check #533588  
Sellers - Nolte Family
12. \$32,207.00 Check #533589  
U. S. Dept. of Agriculture

**Total Disbursement  
\$2,440,125.65**

**Hopper Land Development  
South, LLC  
(Grantor)**

**Pennstar, LLC  
(Grantee)**

**Bass Enterprises, LLC  
(Grantee)**

**\$2,405,340.32  
Pennstar, LLC  
\$2,442,535.33  
Bass Enterprises, LLC  
\$37,195.00  
Exit Realty  
\$700,000.00  
Pennstar, LLC**

**Pennstar, LLC  
Bay Title Closing  
File  
#BTG-0510-11416  
Bass Enterprises, LLC**

1. \$2,440,125.65 Check #533492  
Bay Title as Escrow Agent
2. \$10,110.00 Check #533493  
Bay Title Insurance Company
3. \$4,899.00 Check #533494  
Bay Title Insurance Company
4. \$344,437.50 Check #533495  
Bill Springer
5. \$65.00 Check #533496  
David Slepian, P. C.
6. \$2,417,066.00 Check #533497  
Hopper Land Development South, LLC
7. \$344,437.50 Check #533498  
Michael Weiss
8. \$23,930.00 Check #533499  
Pennstar, LLC

**Total Disbursement  
\$5,585,070.65**

**EXHIBIT**

**A**



Re: Bass Enterprises LLC et. al. v. Pennstar, LLC et. al.  
in the Circuit Court of Baldwin County, Alabama

Summary of Financial Activity Related to the Nolte Transaction

|   | Buyer                  | Seller                 |
|---|------------------------|------------------------|
| At signing of purchase agreement between Springer, Weiss and Nolte family:<br>Mr. Springer and Mr. Weiss deposit earnest money at Exit Realty | \$ 40,000.00           |                        |
| At assignment of option to purchase from Springer and Weiss to Pennstar, LLC:   |                        |                        |
| Pennstar issues check to Mr. Springer for assignment of option  | 25,000.00              | \$ 25,000.00           |
| Pennstar issues check to Mr. Weiss for assignment of option   | 25,000.00              | 25,000.00              |
| Pennstar issues check to Bay Title for an escrow deposit  | 700,000.00             |                        |
| Bay Title Escrow Account Activity on October 28, 2005:  |                        |                        |
| Bass Enterprises, LLC presents a bank-issued check to Bay Title   | 2,442,535.33           |                        |
| Pennstar, LLC issues a check to Bay Title   | 2,405,340.32           |                        |
| Bay Title issues checks from their escrow account:  |                        |                        |
| Payment of commission to Exit Realty from Nolte proceeds  |                        | 146,900.00             |
| Payments to, or on behalf of, the Nolte Family  |                        | 2,282,102.05           |
| Payment to Hopper Land Development South, LLC   |                        | 2,417,066.00           |
| Payments to Mr. Springer and Mr. Weiss  |                        | 688,875.00             |
| Payment to Pennstar, LLC  |                        | 23,930.00              |
| Payments to Bay Title for Title Insurance - per closing statements  |                        | 15,000.00              |
| Title insurance (See invoice at Pennstar Production 00157A)   | \$ 5,090.00            |                        |
| Unknown purpose   | 9,910.00               |                        |
| Payments to Bay Title for closing fees, document preparation and couriers   |                        | 580.00                 |
| Payments to Baldwin County Probate for recording fees   |                        | 7,358.00               |
| Payment to Surveyor   |                        | 5,695.00               |
| Payment of taxes  |                        | 369.60                 |
|   | <u>\$ 5,637,875.65</u> | <u>\$ 5,637,875.65</u> |
| Net Money Paid:   |                        |                        |
| Bass Enterprises, LLC   | \$ 2,442,535.33        |                        |
| Net Pennstar, LLC (\$750,000 + \$2,405,340.32 - \$2,417,066.00 - \$23,930.00)   | 714,344.32             |                        |
| Total cost of property  | <u>\$ 3,156,879.65</u> |                        |

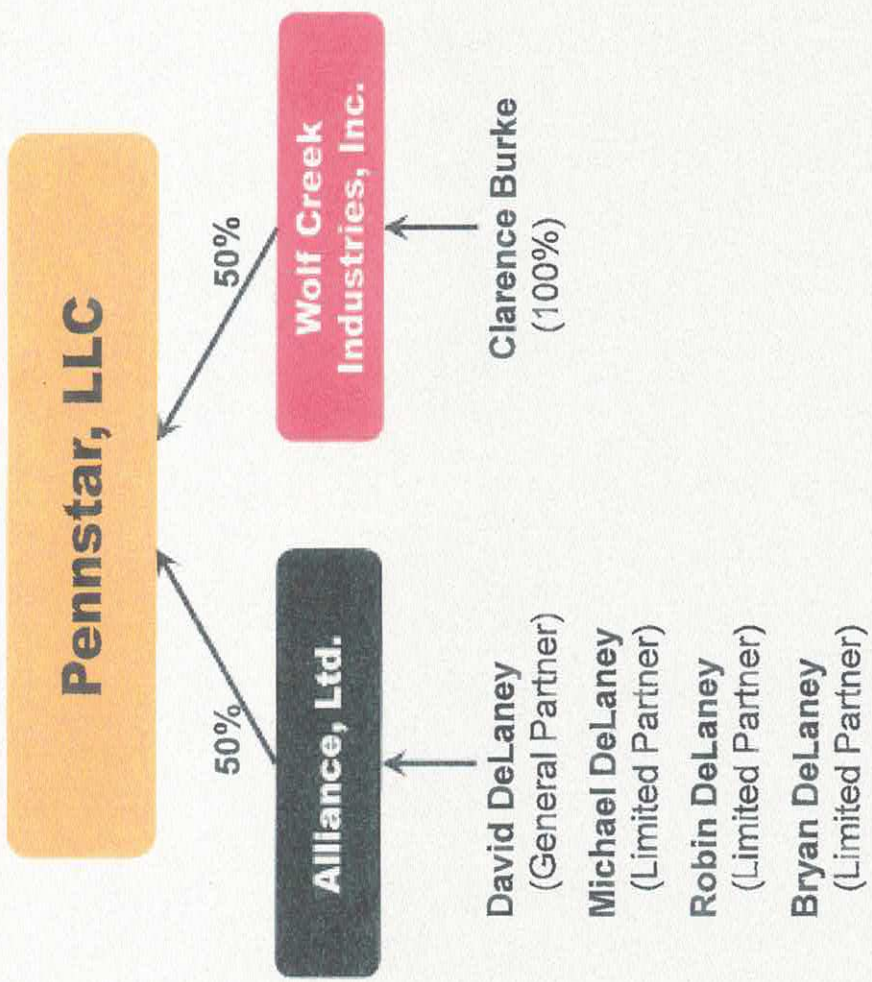


**Management**

**Magnolia River  
Management,  
LLC**  
(Manager)

**Summit  
Construction  
Company, Inc.**  
(Manager)

**Clarence Burke**  
(President)



**Principal  
Attorney**

**Michael DeLaney**





**Management**

**Summit Construction Company, Inc.**  
(Manager)

**Clarence Burke**  
(President)

**Baldwin County Sewer Services, LLC**

43.5%

**Alliance, Ltd.**

**David DeLaney**  
(General Partner)  
**Michael DeLaney**  
(Limited Partner)  
**Robin DeLaney**  
(Limited Partner)  
**Bryan DeLaney**  
(Limited Partner)

43.5%

**Wolf Creek Industries, Inc.**

**Clarence Burke**  
(100%)

11%

**Supersonic, LLC**

2%

**John Foley**

**Principal Attorney**

**Michael DeLaney**



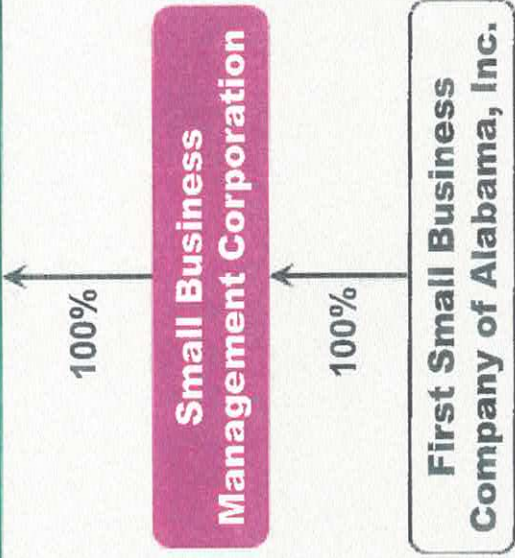
**Management**

**Small  
Business  
Management  
Corporation**  
(Manager)

**David DeLaney**  
(President)

**Michael DeLaney**  
(Vice President)

**Alabama Capital, LLC**



**Principal  
Attorney**

**Michael DeLaney**

**Magnolia River  
Management, LLC**

**Management**

**Principal  
Attorney**

**Summit  
Construction  
Company, Inc.**  
(Manager)

**Clarence Burke**  
(President)

**Wolf Creek  
Industries, Inc.**

**Clarence Burke**  
(100%)

100%

**Michael DeLaney**

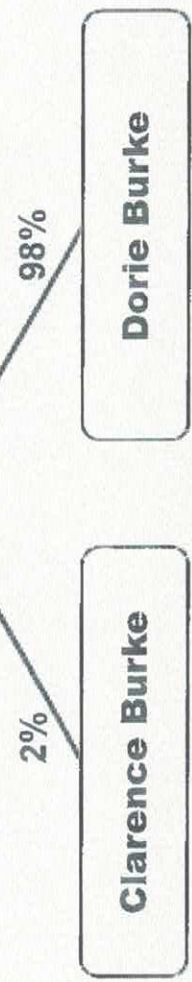


**Management**

**Clarence Burke**  
(President)

**Dorie Burke**  
(Treasurer/  
Secretary)

**Summit Construction  
Company, Inc.**



**Principal  
Attorney**

**Michael DeLaney**



**Management**

**David DeLaney**  
(President)

**Michael DeLaney**  
(Vice President)

**Small Business  
Management Corporation**

100%

**First Small Business  
Company of Alabama, Inc.**

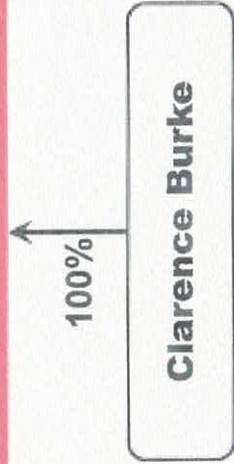
**Principal  
Attorney**

**Michael DeLaney**

**Wolf Creek Industries, Inc.**

**Principal Attorney**

**Michael DeLaney**



**Management**

**Clarence Burke**  
(President)

**Dorie Burke**  
(Secretary)





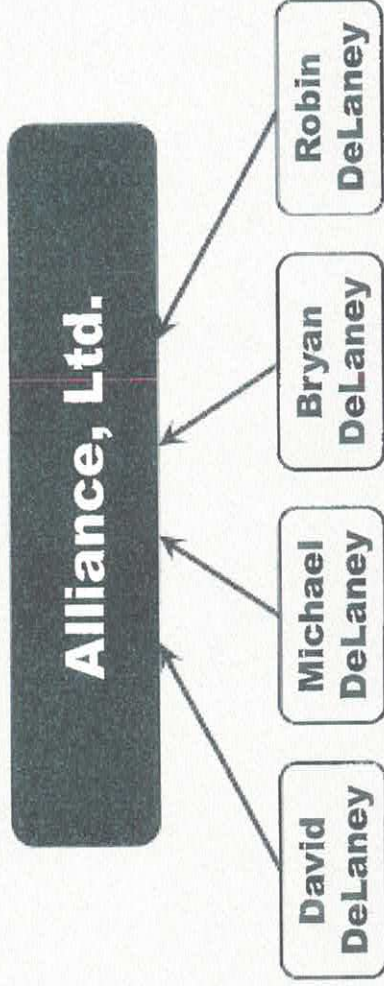
**Management**

**David DeLaney**  
(General Partner)

**Michael DeLaney**  
(Limited Partner)

**Bryan DeLaney**  
(Limited Partner)

**Robin DeLaney**  
(Limited Partner)



**Principal  
Attorney**

**Michael DeLaney**



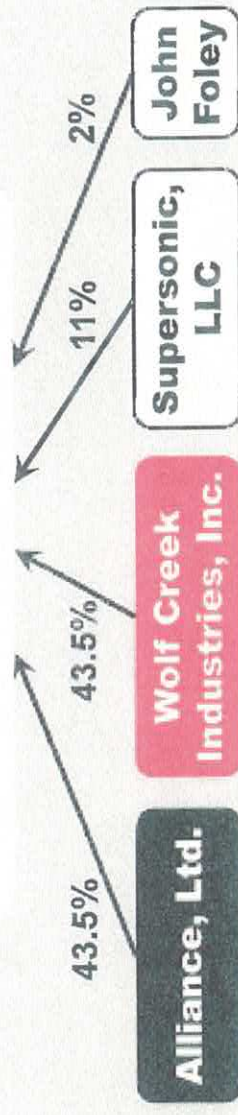
**Management**

**Magnolia River Management, LLC**  
(Manager)

**Summit Construction Company, Inc.**  
(Manager)

**Clarence Burke**  
(President)

**Sausasand, LLC**



**Alliance, Ltd.**

**Wolf Creek Industries, Inc.**

**Supersonic, LLC**

**John Foley**

**David DeLaney**  
(General Partner)

**Michael Delaney**  
(Limited Partner)

**Robin DeLaney**  
(Limited Partner)

**Bryan Delaney**  
(Limited Partner)

**Clarence Burke**  
(100%)



# The Oyster, LLC

## Management

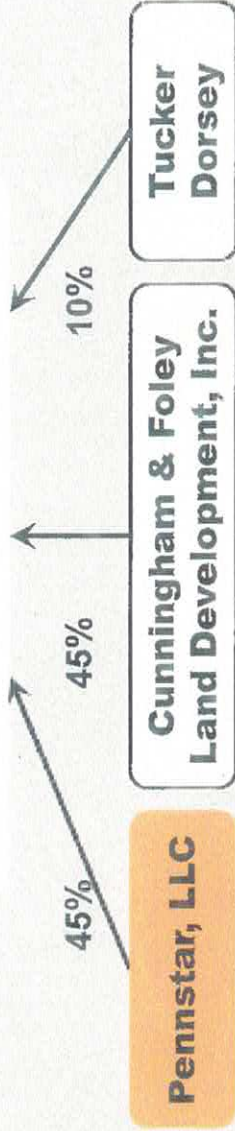
**Magnolia River  
Management,  
LLC**

(Manager)

**Summit  
Construction  
Company, Inc.**

(Manager)

**Clarence Burke  
(President)**



**Pennstar, LLC**

50%

50%

**Alliance, Ltd.**

**Wolf Creek  
Industries, Inc.**

Rob Cunningham  
John Foley

David DeLaney  
(General Partner)

Michael DeLaney  
(Limited Partner)

Robin DeLaney  
(Limited Partner)

Bryan DeLaney  
(Limited Partner)

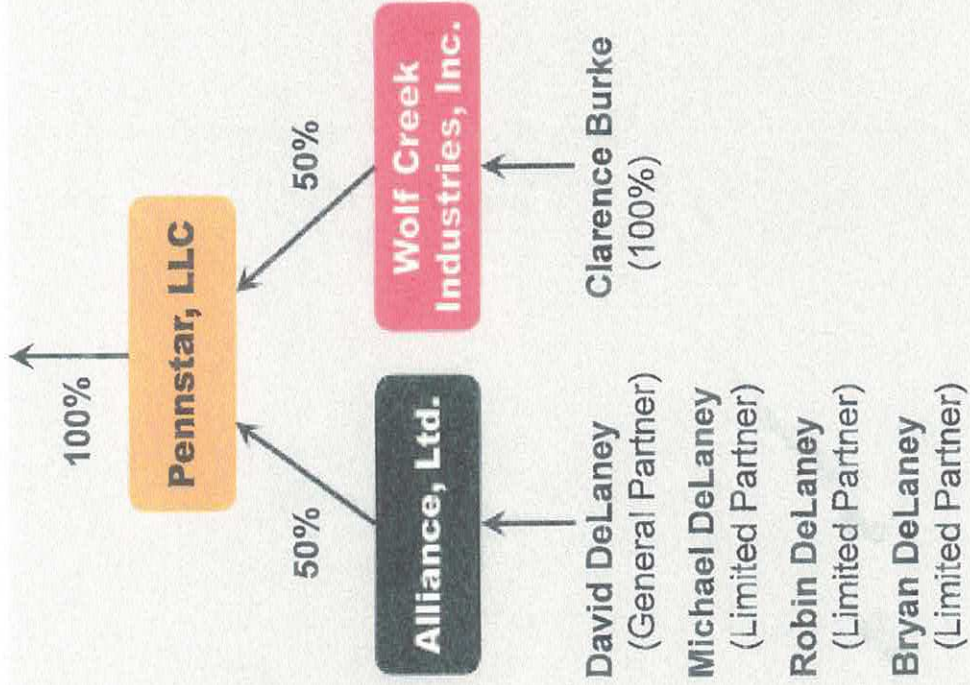
Clarence Burke  
(100%)



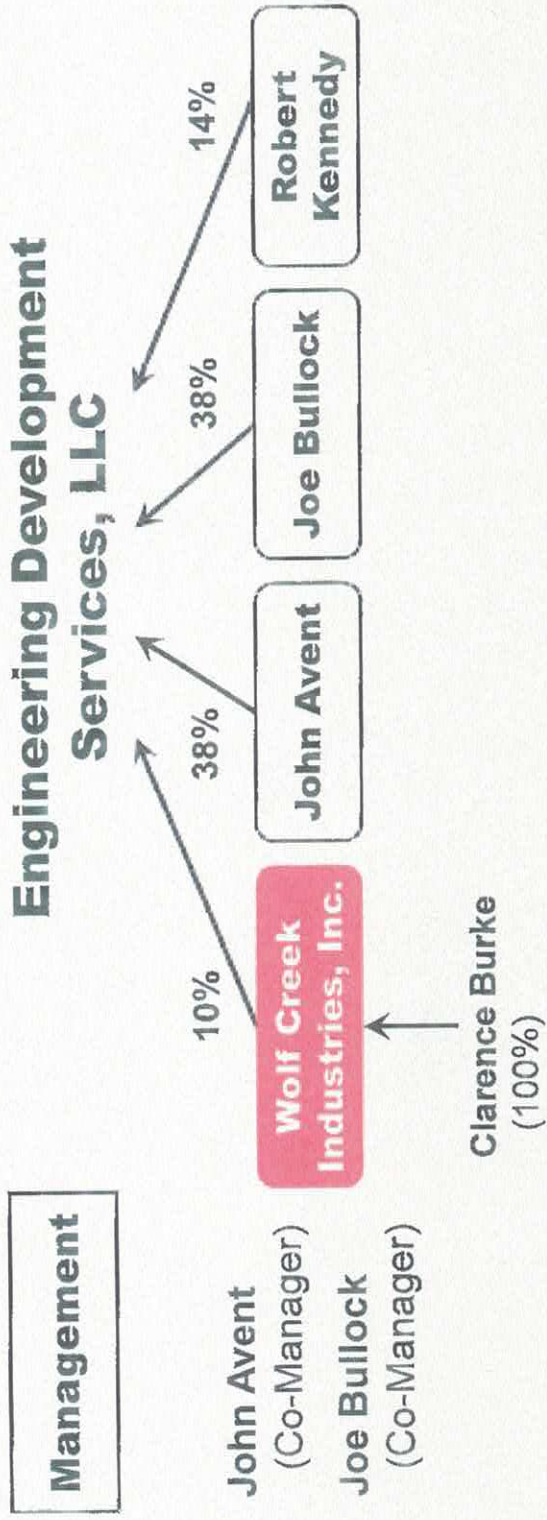
## Management

Wayne Hopper

## Hopper Land Development South, LLC







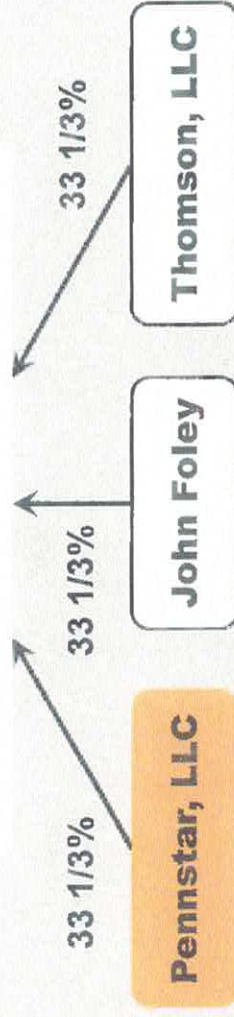
# Crossroads, LLC

## Management

**Magnolia River  
Management,  
LLC**  
(Manager)

**Summit  
Construction  
Company, Inc.**  
(Manager)

**Clarence Burke**  
(President)



**Pennstar, LLC**

**John Foley**

**Thomson, LLC**

50%

50%

**Alliance, Ltd.**

**Wolf Creek  
Industries, Inc.**

**David DeLaney**  
(General Partner)

**Michael DeLaney**  
(Limited Partner)

**Robin DeLaney**  
(Limited Partner)

**Bryan DeLaney**  
(Limited Partner)

**Clarence Burke**  
(100%)

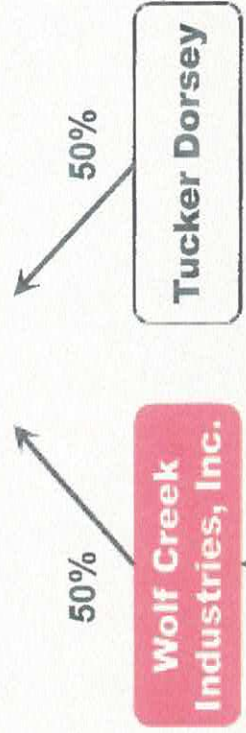


**Management**

**Summit  
Construction  
Company, Inc.**  
(Manager)

**Clarence Burke**  
(President)

**Remington, LLC**



**Clarence Burke**  
(100%)



# A. Settlement Statement

U.S. Department of Housing  
and Urban Development

OMB No. 2502-0265

|   |  |                                  |  |   |   |                                |  |  |  |
|---|--|----------------------------------|--|---|---|--------------------------------|--|--|--|
| <b>B. Type of Loan</b>  |  |                                  |  | <b>6. File Number</b>   |   | <b>7. Loan Number</b>          |  | <b>8. Mortgage Insurance Case Number</b> |  |
| 1. <input type="checkbox"/> FHA   |  | 2. <input type="checkbox"/> FmHA |  | 3. <input type="checkbox"/> Conv. Unit n.   |   | 4. <input type="checkbox"/> VA |  | 5. <input type="checkbox"/> Conv. Ins.   |  |
|   |  |                                  |  | 6. <input checked="" type="checkbox"/> None (Cash)  |   | BTG-0509-11139                 |  |  |  |
| <b>C. Note:</b> This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown, item marked "(p.o.c)" were paid outside the closing; they are shown here for information purposes and are not included in the totals. |  |                                  |  |   |   |                                |  |  |  |
| <b>D. Name and Address of Borrower</b>  |  |                                  |  | <b>E. Name and Address of Seller</b>  |   |                                |  | <b>F. Name and Address of Lender</b>     |  |
| Hopper Land Development South, LLC<br>1266 West Paces Ferry Road, Suite 276<br>Atlanta, Georgia 30327   |  |                                  |  | George J. Nolte, George Mackey Nolte, Ida Nancy<br>Nolte a/k/a Ida Sawyer Nolte and John H. Nolte |   |                                |  |  |  |
| <b>G. Property Location</b>   |  |                                  |  | <b>H. Settlement Agent</b>  |   |                                |  |  |  |
| S8-778-RJ6 Parcels 1,2, and 3 apx. 247 acres H-   |  |                                  |  | BAY TITLE INSURANCE COMPANY   |   |                                |  |  |  |
|   |  |                                  |  | <b>Place of Settlement</b>  |   |                                |  | <b>I. Settlement Date</b>                |  |
|   |  |                                  |  | 117 COVE AVENUE<br>GULF SHORES, AL 36542  |   |                                |  | October 28, 2005                         |  |
| <b>J. SUMMARY OF BORROWER'S TRANSACTION:</b>  |  |                                  |  |   | <b>K. SUMMARY OF SELLER'S TRANSACTION:</b>                  |                                |  |  |  |
| <b>100. GROSS AMOUNT DUE FROM BORROWER</b>  |  |                                  |  |   | <b>400. GROSS AMOUNT DUE TO SELLER</b>                      |                                |  |  |  |
| 101. Contract sales price   |  |                                  |  |   | 401. Contract sales price 2,440,000.00                      |                                |  |  |  |
| 102. Personal Property  |  |                                  |  |   | 402. Personal Property                                      |                                |  |  |  |
| 103. Settlement charges to borrower (line 140)  |  |                                  |  |   | 403.  |                                |  |  |  |
| 104.  |  |                                  |  |   | 404.  |                                |  |  |  |
| 105.  |  |                                  |  |   | 405.  |                                |  |  |  |
| Adjustment for items paid by seller in advance  |  |                                  |  |   | Adjustment for items paid by seller in advance              |                                |  |  |  |
| 106. City/town taxes to   |  |                                  |  |   | 406. City/town taxes to                                     |                                |  |  |  |
| 107. County taxes to  |  |                                  |  |   | 407. County taxes to  |                                |  |  |  |
| 108. Assessments to   |  |                                  |  |   | 408. Assessments to   |                                |  |  |  |
| 109.  |  |                                  |  |   | 409.  |                                |  |  |  |
| 110.  |  |                                  |  |   | 410.  |                                |  |  |  |
| 111.  |  |                                  |  |   | 411.  |                                |  |  |  |
| 112.  |  |                                  |  |   | 412.  |                                |  |  |  |
| <b>120. GROSS AMOUNT DUE FROM BORROWER</b>  |  |                                  |  |   | <b>420. GROSS AMOUNT DUE TO SELLER</b> 2,440,000.00         |                                |  |  |  |
| <b>200. AMOUNT PAID BY OR IN BEHALF OF BORROWER</b>   |  |                                  |  |   | <b>500. REDUCTION IN AMOUNT DUE TO SELLER</b>               |                                |  |  |  |
| 201. Deposit or earnest money   |  |                                  |  |   | 501. Excess deposit (see instruction)                       |                                |  |  |  |
| 202. Principal amount of new loan(s)  |  |                                  |  |   | 502. Settlement charges to seller (line 1400) 157,869.60    |                                |  |  |  |
| 203. Existing loan(s) taken subject to  |  |                                  |  |   | 503. Existing loan(s) taken subject to                      |                                |  |  |  |
| 204.  |  |                                  |  |   | 504. Payoff of first mortgage loan                          |                                |  |  |  |
|   |  |                                  |  |   | US Department of Agriculture 141,965                        |                                |  |  |  |
| 205.  |  |                                  |  |   | 505. Payoff of second mortgage loan                         |                                |  |  |  |
|   |  |                                  |  |   | U.S. Department of Agriculture 44,179.01                    |                                |  |  |  |
| 206.  |  |                                  |  |   | 506. Payoff Third mortgage Loan 302,100.00                  |                                |  |  |  |
| 207.  |  |                                  |  |   | 507.  |                                |  |  |  |
| 208.  |  |                                  |  |   | 508. Reimburse for Part of Survey POC 2,805.00              |                                |  |  |  |
| 209.  |  |                                  |  |   | 509.  |                                |  |  |  |
| Adjustment for items unpaid by seller   |  |                                  |  |   | Adjustment for items unpaid by seller                       |                                |  |  |  |
| 210. City/town taxes to   |  |                                  |  |   | 510. City/town taxes to                                     |                                |  |  |  |
| 211. County taxes to  |  |                                  |  |   | 511. County taxes 10-01-2005 to 10-28-2005 28.35            |                                |  |  |  |
| 212. Assessments to   |  |                                  |  |   | 512. Assessments to   |                                |  |  |  |
| 213.  |  |                                  |  |   | 513.  |                                |  |  |  |
| 214.  |  |                                  |  |   | 514.  |                                |  |  |  |
| 215.  |  |                                  |  |   | 515.  |                                |  |  |  |
| 216.  |  |                                  |  |   | 516.  |                                |  |  |  |
| 217.  |  |                                  |  |   | 517.  |                                |  |  |  |
| 218.  |  |                                  |  |   | 518.  |                                |  |  |  |
| 219.  |  |                                  |  |   | 519.  |                                |  |  |  |
| <b>220. TOTAL PAID BY/FOR BORROWER</b>  |  |                                  |  |   | <b>520. TOTAL REDUCTION AMOUNT DUE SELLER</b> 648,950.66    |                                |  |  |  |
| <b>300. CASH AT SETTLEMENT FOR OR TO BORROWER</b>   |  |                                  |  |   | <b>600. CASH AT SETTLEMENT TO OR FROM SELLER</b>            |                                |  |  |  |
| 301. Gross amount due from borrower (line 1:0)  |  |                                  |  |   | 601. Gross amount due to seller (line 420) 2,440,000.00     |                                |  |  |  |
| 302. Less amount paid by/f for borrower (line 2:0)  |  |                                  |  |   | 602. Less reduction amount due seller (line 520) 648,950.66 |                                |  |  |  |
| <b>303. CASH BORROWER</b>   |  |                                  |  |   | <b>603. CASH DUE TO SELLER</b> 1,791,049.34                 |                                |  |  |  |

EXHIBIT

E

REV. HUD. 1(3/86)

Pennstar Production 00021A

1314 HUD-1 Settlement Statement  
 1314 HUD-1 Settlement Statement

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
 SETTLEMENT STATEMENT PAGE 2

| L. SETTLEMENT CHARGES:  |  | PAID FROM BORROWER'S FUNDS AT SETTLEMENT | PAID FROM SELLER'S FUNDS AT SETTLEMENT |
|---|--|--|--|
| 700. TOTAL SALES/BROKER'S COMMISSION based on price \$ 2,440,000.00 @ 6.00 % = 146,400.00       |  |  |  |
| Division of commission (line 700) as follows:   |  |  |  |
| 701. 146,400.00 to Exit Realty  |  |  |  |
| 702. to   |  |  |  |
| 703. Commission paid at settlement  |  |  | 146,400.00                             |
| 704. Compliance Fee to Exit Realty  |  |  | 250.00                                 |
| 800. ITEMS PAYABLE IN CONNECTION WITH LOAN  |  |  |  |
| 801. Loan Origination Fee % of to   |  |  |  |
| 802. Loan Discount % of to  |  |  |  |
| 803. Appraisal Fee to   |  |  |  |
| 804. Credit Report to   |  |  |  |
| 805. Lender's Inspection Fee to   |  |  |  |
| 806. Underwriting Fee to  |  |  |  |
| 807. Doc Preparation Fee to   |  |  |  |
| 808. Tax Service Fee to   |  |  |  |
| 809. Flood Certification Fee to   |  |  |  |
| 810. to   |  |  |  |
| 811. to   |  |  |  |
| 812. to   |  |  |  |
| 813. to   |  |  |  |
| 900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE   |  |  |  |
| 901. Interest from to @ \$ /day   |  |  |  |
| 902. Mortgage Insurance premium for to  |  |  |  |
| 903. Hazard Insurance premium for to  |  |  |  |
| 904. to   |  |  |  |
| 905. to   |  |  |  |
| 1000. RESERVES DEPOSITED WITH LENDER FOR  |  |  |  |
| 1001. Hazard Insurance mo. @ \$ /mo.  |  |  |  |
| 1002. Mortgage Insurance mo. @ \$ /mo.  |  |  |  |
| 1003. City property taxes mo. @ \$ /mo.   |  |  |  |
| 1004. County property taxes mo. @ \$ /mo.   |  |  |  |
| 1005. Annual assessments mo. @ \$ /mo.  |  |  |  |
| 1006. mo. @ \$ /mo.   |  |  |  |
| 1007. mo. @ \$ /mo.   |  |  |  |
| 1008. Aggregate Escrow Adjustment   |  |  |  |
| 1100. TITLE CHARGES   |  |  |  |
| 1101. Settlement or closing fee to  |  |  |  |
| 1102. Abstract or title search to   |  |  |  |
| 1103. Title examination to  |  |  |  |
| 1104. Title insurance binder to   |  |  |  |
| 1105. Document preparation to David P. Stepien, P.C.  |  |  | 65.00                                  |
| 1106. Notary fees to  |  |  |  |
| 1107. Attorney's fees to  |  |  |  |
| (includes above items No: )   |  |  |  |
| 1108. Title insurance to Bay Title Insurance Company  |  |  | 5,090.00                               |
| (includes above items No: 1102, 1103 and 1104)  |  |  |  |
| 1109. Lender's coverage \$  |  |  |  |
| 1110. Owner's coverage \$ 2,440,000.00  |  |  |  |
| 1111. Document Printing Fee   |  |  |  |
| 1112. Courier Fee   |  |  |  |
| 1113. Reissue Credit  |  |  |  |
| 1200. GOVERNMENT RECORDING AND TRANSFER CHARGES   |  |  |  |
| 1201. Recording fees Deed \$ 19.00 ; Mortgage \$ ; Release \$                                   |  |  |  |
| 1202. City/County tax/stamps: Deed \$ ; Mortgage \$   |  |  |  |
| 1203. State tax/stamps: Deed \$ 2,440.00 ; Mortgage \$  |  |  |  |
| 1204.   |  |  |  |
| 1205. to  |  |  |  |
| 1300. ADDITIONAL SETTLEMENT CHARGES   |  |  |  |
| 1301. Survey to Survey Concepts   |  |  | 5,695.00                               |
| 1302. Pest inspection to  |  |  |  |
| 1303. Home Warranty to  |  |  |  |
| 1304. 2005 Taxes Ppin 86595, 13708, 31756, 68538 to James "Phil" Nix, Jr., Revenue Commissioner |  |  | 369.60                                 |
| 1305. to  |  |  |  |
| 1306. to  |  |  |  |
| 1307. to  |  |  |  |
| 1308. to  |  |  |  |
| 1400. TOTAL SETTLEMENT CHARGES (enter on lines 103 and 502, Sections j and k)                   |  |  | 157,869.60                             |

CERTIFICATION I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Hopper Land Development Corp., LLC  
 Buyer's Agent  
 I have prepared a true and accurate account of this transaction. I have called the funds to  
 Sellers George and Nancy Nolle  
 John H. Nolle  
 Date October 28, 2008  
 WARNING: Do not knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18, U.S. Code Section 1001 and Section 1010.



# A. Settlement Statement

U.S. Department of Housing  
and Urban Development

OMB No. 2502-0265

|   |  |                                  |  |  |  |  |  |  |  |
|---|--|----------------------------------|--|--|--|--|--|--|--|
| <b>B. Type of Loan</b>  |  |                                  |  | <b>6. File Number</b>  |  | <b>7. Loan Number</b>                    |  | <b>8. Mortgage Insurance Case Number</b> |  |
| 1. <input type="checkbox"/> FHA   |  | 2. <input type="checkbox"/> FmHA |  | 3. <input type="checkbox"/> Conv. Unins.   |  | 4. <input type="checkbox"/> VA           |  | 5. <input type="checkbox"/> Conv. Ins.   |  |
|   |  |                                  |  | 6. <input checked="" type="checkbox"/> None (Cash)   |  | BTG-0509-11139                           |  |  |  |
| <b>C. Notes:</b> This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c)" were paid outside the closing; they are shown here for information purposes and are not included in the totals. |  |                                  |  |  |  |  |  |  |  |
| <b>D. Name and Address of Borrower</b>  |  |                                  |  | <b>E. Name and Address of Seller</b>   |  |  |  | <b>F. Name and Address of Lender</b>     |  |
| Hopper Land Development South, LLC<br>1266 West Paces Ferry Road, Suite 276<br>Atlanta, Georgia 30327   |  |                                  |  | George J. Nolte, George Mackey Nolte, Ida Nancy Nolte a/k/a Ida Sawyer Nolte and John H. Nolte |  |  |  |  |  |
| <b>G. Property Location</b>   |  |                                  |  |  |  | <b>H. Settlement Agent</b>               |  |  |  |
| S8-T7S-R36 Parcels 1,2, and 3 apx. 247 acres +/-  |  |                                  |  |  |  | BAY TITLE INSURANCE COMPANY              |  |  |  |
|   |  |                                  |  |  |  | <b>Place of Settlement</b>               |  | <b>I. Settlement Date</b>                |  |
|   |  |                                  |  |  |  | 117 COVE AVENUE<br>GULF SHORES, AL 36542 |  | October 28, 2005                         |  |
| <b>J. SUMMARY OF BORROWER'S TRANSACTION:</b>  |  |                                  |  |  | <b>K. SUMMARY OF SELLER'S TRANSACTION:</b>       |  |  |  |  |
| <b>100. GROSS AMOUNT DUE FROM BORROWER</b>  |  |                                  |  |  | <b>400. GROSS AMOUNT DUE TO SELLER</b>           |  |  |  |  |
| 101. Contract sales price 2,440,000.00  |  |                                  |  |  | 401. Contract sales price                        |  |  |  |  |
| 102. Personal Property  |  |                                  |  |  | 402. Personal Property                           |  |  |  |  |
| 103. Settlement charges to borrower (line 140) 2,959.00   |  |                                  |  |  | 403.   |  |  |  |  |
| 104.  |  |                                  |  |  | 404.   |  |  |  |  |
| 105.  |  |                                  |  |  | 405.   |  |  |  |  |
| Adjustment for items paid by seller in advance.   |  |                                  |  |  | Adjustment for items paid by seller in advance   |  |  |  |  |
| 106. City/town taxes to   |  |                                  |  |  | 406. City/town taxes to                          |  |  |  |  |
| 107. County taxes to  |  |                                  |  |  | 407. County taxes to                             |  |  |  |  |
| 108. Assessments to   |  |                                  |  |  | 408. Assessments to                              |  |  |  |  |
| 109.  |  |                                  |  |  | 409.   |  |  |  |  |
| 110.  |  |                                  |  |  | 410.   |  |  |  |  |
| 111.  |  |                                  |  |  | 411.   |  |  |  |  |
| 112.  |  |                                  |  |  | 412.   |  |  |  |  |
| <b>120. GROSS AMOUNT DUE FROM BORROWER 2,442,959.00</b>   |  |                                  |  |  | <b>420. GROSS AMOUNT DUE TO SELLER</b>           |  |  |  |  |
| <b>200. AMOUNT PAID BY OR IN BEHALF OF BORROWER</b>   |  |                                  |  |  | <b>500. REDUCTION IN AMOUNT DUE TO SELLER</b>    |  |  |  |  |
| 201. Deposit or earnest money   |  |                                  |  |  | 501. Earnest deposit (see instruction)           |  |  |  |  |
| 202. Principal amount of new loan(s)  |  |                                  |  |  | 502. Settlement charges to seller (line 1400)    |  |  |  |  |
| 203. Existing loan(s) taken subject to  |  |                                  |  |  | 503. Existing loan(s) taken subject to           |  |  |  |  |
| 204.  |  |                                  |  |  | 504. Payoff of first mortgage loan               |  |  |  |  |
| 205.  |  |                                  |  |  | 505. Payoff of second mortgage loan              |  |  |  |  |
| 206.  |  |                                  |  |  | 506.   |  |  |  |  |
| 207.  |  |                                  |  |  | 507.   |  |  |  |  |
| 208. Reimburse for Part of Survey POC 2,805.00  |  |                                  |  |  | 508.   |  |  |  |  |
| 209.  |  |                                  |  |  | 509.   |  |  |  |  |
| Adjustment for items unpaid by seller   |  |                                  |  |  | Adjustment for items unpaid by seller            |  |  |  |  |
| 210. City/town taxes to   |  |                                  |  |  | 510. City/town taxes to                          |  |  |  |  |
| 211. County taxes 10-01-2005 to 0-28-2005 28.35   |  |                                  |  |  | 511. County taxes to                             |  |  |  |  |
| 212. Assessments to   |  |                                  |  |  | 512. Assessments to                              |  |  |  |  |
| 213.  |  |                                  |  |  | 513.   |  |  |  |  |
| 214.  |  |                                  |  |  | 514.   |  |  |  |  |
| 215.  |  |                                  |  |  | 515.   |  |  |  |  |
| 216.  |  |                                  |  |  | 516.   |  |  |  |  |
| 217.  |  |                                  |  |  | 517.   |  |  |  |  |
| 218.  |  |                                  |  |  | 518.   |  |  |  |  |
| 219.  |  |                                  |  |  | 519.   |  |  |  |  |
| <b>220. TOTAL PAID BY/FOR BORROWER 2,833.35</b>   |  |                                  |  |  | <b>520. TOTAL REDUCTION AMOUNT DUE SELLER</b>    |  |  |  |  |
| <b>300. CASH AT SETTLEMENT FOR OR TO BORROWER</b>   |  |                                  |  |  | <b>600. CASH AT SETTLEMENT TO OR FROM SELLER</b> |  |  |  |  |
| 301. Gross amount due from borrower (line 123) 2,442,959.00   |  |                                  |  |  | 601. Gross amount due to seller (line 420)       |  |  |  |  |
| 302. Less amount paid by/far borrower (line 220) 2,833.35   |  |                                  |  |  | 602. Less reduction amount due seller (line 520) |  |  |  |  |
| <b>303. CASH DUE FROM BORROWER 2,440,125.65</b>   |  |                                  |  |  | <b>603. CASH SELLER</b>                          |  |  |  |  |

REV. HUD-1 (3/86)

Pennstar Production 00023A



| L. SETTLEMENT CHARGES                          |   |  |                             | PAID FROM<br>BORROWER'S<br>FUNDS AT<br>SETTLEMENT | PAID FROM<br>SELLER'S<br>FUNDS AT<br>SETTLEMENT |
|--|---|--|-----------------------------|---|---|
| 700.   | TOTAL SALES/BROKER'S COMMISSION based on price \$ @ % =                 |  |                             |   |   |
| Division of commission (line 700) as follows:  |   |  |                             |   |   |
| 701.   | to  |  |                             |   |   |
| 702.   | to  |  |                             |   |   |
| 703.   | Commission paid at settlement   |  |                             |   |   |
| 704.   | Compliance Fee  | to                                       | Exit Realty                 | 50.00   |   |
| 800.   | ITEMS PAYABLE IN CONNECTION WITH LOAN                                   |  |                             |   |   |
| 801.   | Loan Origination Fee  | % of                                     | to                          |   |   |
| 802.   | Loan Discount   | % of                                     | to                          |   |   |
| 803.   | Appraisal Fee   |  | to                          |   |   |
| 804.   | Credit Report   |  | to                          |   |   |
| 805.   | Lender's Inspection Fee   |  | to                          |   |   |
| 806.   | Underwriting Fee  |  | to                          |   |   |
| 807.   | Doc Preparation Fee   |  | to                          |   |   |
| 808.   | Tax Service Fee   |  | to                          |   |   |
| 809.   | Flood Certification Fee   |  | to                          |   |   |
| 810.   |   |  | to                          |   |   |
| 811.   |   |  | to                          |   |   |
| 812.   |   |  | to                          |   |   |
| 813.   |   |  | to                          |   |   |
| 900.   | ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE                          |  |                             |   |   |
| 901.   | Interest from   | to                                       | @ \$ /day                   |   |   |
| 902.   | Mortgage Insurance premium for  | to                                       |                             |   |   |
| 903.   | Hazard Insurance premium for  | to                                       |                             |   |   |
| 904.   |   | to                                       |                             |   |   |
| 905.   |   | to                                       |                             |   |   |
| 1000.  | RESERVES DEPOSITED WITH LENDER FOR                                      |  |                             |   |   |
| 1001.  | Hazard Insurance  | mo. @ \$                                 | /mo.                        |   |   |
| 1002.  | Mortgage Insurance  | mo. @ \$                                 | /mo.                        |   |   |
| 1003.  | City property taxes   | mo. @ \$                                 | /mo.                        |   |   |
| 1004.  | County property taxes   | mo. @ \$                                 | /mo.                        |   |   |
| 1005.  | Annual assessments  | mo. @ \$                                 | /mo.                        |   |   |
| 1006.  |   | mo. @ \$                                 | /mo.                        |   |   |
| 1007.  |   | mo. @ \$                                 | /mo.                        |   |   |
| 1008.  | Aggregate Escrow Adjustment   |  |                             |   |   |
| 1100.  | TITLE CHARGES   |  |                             |   |   |
| 1101.  | Settlement or closing fee   | to                                       | Bay Title Insurance Company | 200.00  |   |
| 1102.  | Abstract or title search  | to                                       |                             |   |   |
| 1103.  | Title examination   | to                                       |                             |   |   |
| 1104.  | Title Insurance binder  | to                                       |                             |   |   |
| 1105.  | Document preparation  | to                                       |                             |   |   |
| 1106.  | Notary fees   | to                                       |                             |   |   |
| 1107.  | Attorney's fees   | to                                       |                             |   |   |
| (includes above items No. )                    |   |  |                             |   |   |
| 1108.  | Title Insurance   | to                                       |                             |   |   |
| (includes above items No. 1102, 1103 and 1104) |   |  |                             |   |   |
| 1109.  | Lender's coverage \$  |  |                             |   |   |
| 1110.  | Owner's coverage \$   | 2,440,000.00                             |                             |   |   |
| 1111.  | Document Printing Fee   |  |                             |   |   |
| 1112.  | Courier Fee   |  |                             | 50.00   |   |
| 1113.  | Release Credit  |  |                             |   |   |
| 1200.  | GOVERNMENT RECORDING AND TRANSFER CHARGES                               |  |                             |   |   |
| 1201.  | Recording fees  | Deed \$ 19.00 ; Mortgage \$ ; Release \$ |                             | 19.00   |   |
| 1202.  | City/County tax/stamps:   | Deed \$ ; Mortgage \$                    |                             |   |   |
| 1203.  | State tax/stamps:   | Deed \$ 2,440.00 ; Mortgage \$           |                             | 2,440.00  |   |
| 1204.  |   |  |                             |   |   |
| 1205.  |   | to                                       |                             |   |   |
| 1300.  | ADDITIONAL SETTLEMENT CHARGES   |  |                             |   |   |
| 1301.  | Survey  | to                                       |                             |   |   |
| 1302.  | Post inspection   | to                                       |                             |   |   |
| 1303.  | Home Warranty   | to                                       |                             |   |   |
| 1304.  | 2005 Taxes Ppin 86595, 13708, 31756 68538                               | to                                       |                             |   |   |
| 1305.  |   | to                                       |                             |   |   |
| 1306.  |   | to                                       |                             |   |   |
| 1307.  |   | to                                       |                             |   |   |
| 1308.  |   | to                                       |                             |   |   |
| 1400.  | TOTAL SETTLEMENT CHARGES (refer on lines 103 and 562, Sections J and K) |  |                             | 2,959.00  |   |

**CERTIFICATION** I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

*[Signature]*  
George J. Nolte and Elizabeth South, LLC

*[Signature]*  
George J. Nolte / Ida Nancy Nolte aka Ida Sawyer Nolte

**Borrower**

The HUD-1 Settlement Statement which I have paid or in a true and accurate account of this transaction. I have signed the title to

*[Signature]*  
Solles George Mackay Nolte / John H. Nolte

**Settlement Agent**

**WARNING:** It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction: 5 years, \$250,000 fine and/or imprisonment.

October 28, 2005

REV. HUD1(3/06)

U.S. DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT

## A. Settlement Statement

U.S. Department of Housing  
and Urban Development

OMB No. 2502-0265

|   |  |   |  |  |  |   |  |
|---|--|---|--|--|--|---|--|
| <b>B. Type of Loan</b>  |  |   |  | <b>7. Loan Number</b>  |  | <b>8. Mortgage Insurance Case Number</b>      |  |
| 1. <input type="checkbox"/> FHA   |  | 2. <input type="checkbox"/> FmHA        |  | 3. <input checked="" type="checkbox"/> Conv. Unins.                        |  | 4. <input type="checkbox"/> VA                |  |
| 5. <input type="checkbox"/> Conv. Ins.  |  | 6. <input type="checkbox"/> None (Cash) |  | 6. File Number<br>BTG-0510-11416   |  |   |  |
| C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c)" were paid outside the closing; they are shown here for information purposes and are not included in the totals. |  |   |  |  |  |   |  |
| <b>D. Name and Address of Borrower</b><br>Pennstar, LLC and Bass Enterprises, LLC<br>PO Box 1629<br>Poley, Alabama 36536  |  |   |  | <b>E. Name and Address of Seller</b><br>Hopper Land Development South, LLC |  | <b>F. Name and Address of Lender</b>          |  |
| <b>G. Property Location</b><br>S8-17S-R36 Parcels 1,2, and 3 apx. 244 acres +/-   |  |   |  | <b>H. Settlement Agent</b><br>BAY TITLE INSURANCE COMPANY                  |  |   |  |
|   |  |   |  | <b>Place of Settlement</b><br>117 COVE AVENUE<br>GULF SHORES, AL 36542     |  | <b>I. Settlement Date</b><br>October 28, 2005 |  |
| <b>J. SUMMARY OF BORROWER'S TRANSACTION:</b>  |  |   |  | <b>K. SUMMARY OF SELLER'S TRANSACTION:</b>                                 |  |   |  |
| 100. GROSS AMOUNT DUE FROM BORROWER   |  |   |  | 400. GROSS AMOUNT DUE TO SELLER  |  |   |  |
| 101. Contract sales price   |  |   |  | 401. Contract sales price 4,880,000.00                                     |  |   |  |
| 102. Personal Property  |  |   |  | 402. Personal Property   |  |   |  |
| 103. Settlement charges to borrower (line 1400)   |  |   |  | 403.   |  |   |  |
| 104.  |  |   |  | 404.   |  |   |  |
| 105.  |  |   |  | 405.   |  |   |  |
| Adjustment for items paid by seller in advance  |  |   |  | Adjustment for items paid by seller in advance                             |  |   |  |
| 106. City/town taxes to   |  |   |  | 406. City/town taxes to  |  |   |  |
| 107. County taxes to  |  |   |  | 407. County taxes to   |  |   |  |
| 108. Assessments to   |  |   |  | 408. Assessments to  |  |   |  |
| 109.  |  |   |  | 409.   |  |   |  |
| 110.  |  |   |  | 410.   |  |   |  |
| 111.  |  |   |  | 411.   |  |   |  |
| 112.  |  |   |  | 412.   |  |   |  |
| 120. GROSS AMOUNT DUE FROM BORROWER   |  |   |  | 420. GROSS AMOUNT DUE TO SELLER 4,880,000.00                               |  |   |  |
| 200. AMOUNT PAID BY OR IN BEHALF OF BORROWER  |  |   |  | 500. REDUCTION IN AMOUNT DUE TO SELLER                                     |  |   |  |
| 201. Deposit or earnest money   |  |   |  | 501. Excess deposit (see instruction)                                      |  |   |  |
| 202. Principal amount of new loan(s)  |  |   |  | 502. Settlement charges to seller (line 1400) 9,975.00                     |  |   |  |
| 203. Existing loan(s) taken subject to  |  |   |  | 503. Existing loan(s) taken subject to                                     |  |   |  |
| 204.  |  |   |  | 504. Payoff of first mortgage loan   |  |   |  |
| 205.  |  |   |  | 505. Payoff of second mortgage loan  |  |   |  |
| 206.  |  |   |  | 506. Assignment of Contract 712,805.23 344,437.50                          |  |   |  |
| 207.  |  |   |  | 507. Assignment of Contract 344,437.50                                     |  |   |  |
| 208.  |  |   |  | 508. Reimburse pt of EM & EM pd to Assignor 23,930.00                      |  |   |  |
| 209.  |  |   |  | 509. Purchase 2,440,125.85   |  |   |  |
| Adjustment for items unpaid by seller   |  |   |  | Adjustment for items unpaid by seller                                      |  |   |  |
| 210. City/town taxes to   |  |   |  | 510. City/town taxes to  |  |   |  |
| 211. County taxes to  |  |   |  | 511. County taxes 10-01-2005 to 10-28-2005 28.35                           |  |   |  |
| 212. Assessments to   |  |   |  | 512. Assessments to  |  |   |  |
| 213.  |  |   |  | 513.   |  |   |  |
| 214.  |  |   |  | 514.   |  |   |  |
| 215.  |  |   |  | 515.   |  |   |  |
| 216.  |  |   |  | 516.   |  |   |  |
| 217.  |  |   |  | 517.   |  |   |  |
| 218.  |  |   |  | 518.   |  |   |  |
| 219.  |  |   |  | 519.   |  |   |  |
| 220. TOTAL PAID BY/FOR BORROWER   |  |   |  | 520. TOTAL REDUCTION AMOUNT DUE SELLER 3,162,934.00                        |  |   |  |
| 300. CASH AT SETTLEMENT FOR OR TO BORROWER  |  |   |  | 600. CASH AT SETTLEMENT TO OR FROM SELLER                                  |  |   |  |
| 301. Gross amount due from borrower (line 120)  |  |   |  | 601. Gross amount due to seller (line 420) 4,880,000.00                    |  |   |  |
| 302. Less amount paid by/for borrower (line 220)  |  |   |  | 602. Less reduction amount due seller (line 520) 3,162,934.00              |  |   |  |
| 303. CASH BORROWER  |  |   |  | 603. CASH DUE TO SELLER 1,717,066.00                                       |  |   |  |



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ELC/PABBY

## SETTLEMENT CHARGES:

|       |   |  | @                                   | % =                         | PAID FROM<br>BORROWER'S<br>FUNDS AT<br>SETTLEMENT | PAID FROM<br>SELLER'S<br>FUNDS AT<br>SETTLEMENT |
|-------|---|--|-------------------------------------|-----------------------------|---|---|
| 700.  | TOTAL SALES/BROKER'S COMMISSION based on price \$                       |  |                                     |                             |   |   |
|       | Division of commission (line 700) as follows:                           |  |                                     |                             |   |   |
| 701.  |   | to                                       |                                     |                             |   |   |
| 702.  |   | to                                       |                                     |                             |   |   |
| 703.  | Commission paid at settlement   |  |                                     |                             |   |   |
| 704.  |   | to                                       |                                     |                             |   |   |
| 800.  | ITEMS PAYABLE IN CONNECTION WITH LOAN                                   |  |                                     |                             |   |   |
| 801.  | Loan Origination Fee  | % of                                     | to                                  |                             |   |   |
| 802.  | Loan Discount   | % of                                     | to                                  |                             |   |   |
| 803.  | Appraisal Fee   |  | to                                  |                             |   |   |
| 804.  | Credit Report   |  | to                                  |                             |   |   |
| 805.  | Lender's Inspection Fee   |  | to                                  |                             |   |   |
| 806.  | Underwriting Fee  |  | to                                  |                             |   |   |
| 807.  | Doc Preparation Fee   |  | to                                  |                             |   |   |
| 808.  | Tax Service Fee   |  | to                                  |                             |   |   |
| 809.  | Flood Certification Fee   |  | to                                  |                             |   |   |
| 810.  |   |  | to                                  |                             |   |   |
| 811.  |   |  | to                                  |                             |   |   |
| 812.  |   |  | to                                  |                             |   |   |
| 813.  |   |  | to                                  |                             |   |   |
| 900.  | ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE                          |  |                                     |                             |   |   |
| 901.  | Interest from   |  | to                                  | @ \$ /day                   |   |   |
| 902.  | Mortgage Insurance premium for  |  | to                                  |                             |   |   |
| 903.  | Hazard Insurance premium for  |  | to                                  |                             |   |   |
| 904.  |   |  | to                                  |                             |   |   |
| 905.  |   |  | to                                  |                             |   |   |
| 1000. | RESERVES DEPOSITED WITH LENDER FOR                                      |  |                                     |                             |   |   |
| 1001. | Hazard Insurance  | mo. @ \$                                 |                                     | /mo.                        |   |   |
| 1002. | Mortgage Insurance  | mo. @ \$                                 |                                     | /mo.                        |   |   |
| 1003. | City property taxes   | mo. @ \$                                 |                                     | /mo.                        |   |   |
| 1004. | County property taxes   | mo. @ \$                                 |                                     | /mo.                        |   |   |
| 1005. | Annual assessments  | mo. @ \$                                 |                                     | /mo.                        |   |   |
| 1006. |   | mo. @ \$                                 |                                     | /mo.                        |   |   |
| 1007. |   | mo. @ \$                                 |                                     | /mo.                        |   |   |
| 1008. | Aggregate Escrow Adjustment   |  |                                     |                             |   |   |
| 1100. | TITLE CHARGES   |  |                                     |                             |   |   |
| 1101. | Settlement or closing fee   |  | to                                  |                             |   |   |
| 1102. | Abstract or title search  |  | to                                  |                             |   |   |
| 1103. | Title examination   |  | to                                  |                             |   |   |
| 1104. | Title insurance binder  |  | to                                  |                             |   |   |
| 1105. | Document preparation  |  | to                                  | David P. Slepian, P.C.      |   | 65.00   |
| 1106. | Notary fees   |  | to                                  |                             |   |   |
| 1107. | Attorney's fees   |  | to                                  |                             |   |   |
|       | (includes above items No. )   |  |                                     |                             |   |   |
| 1108. | Title insurance   |  | to                                  | Bay Title Insurance Company |   | 9,910.00  |
|       | (includes above items No. 1102, 1103 and 1104 )                         |  |                                     |                             |   |   |
| 1109. | Lender's coverage \$  |  |                                     |                             |   |   |
| 1110. | Owner's coverage \$ 4,880,000.00  |  |                                     |                             |   |   |
| 1111. | Document Printing Fee   |  |                                     |                             |   |   |
| 1112. | Courier Fee   |  |                                     |                             |   |   |
| 1113. | Reissue Credit  |  |                                     |                             |   |   |
| 1200. | GOVERNMENT RECORDING AND TRANSFER CHARGES                               |  |                                     |                             |   |   |
| 1201. | Recording fees  | Deed \$ 19.00 ; Mortgage \$ ; Release \$ |                                     |                             |   |   |
| 1202. | City/County tax/stamps:   | Deed \$ ; Mortgage \$                    |                                     |                             |   |   |
| 1203. | State tax/stamps:   | Deed \$ 4,880.00 ; Mortgage \$           |                                     |                             |   |   |
| 1204. |   |  |                                     |                             |   |   |
| 1205. |   | to                                       |                                     |                             |   |   |
| 1300. | ADDITIONAL SETTLEMENT CHARGES   |  |                                     |                             |   |   |
| 1301. | Survey  | to                                       | Survey Concepts (8,500.00 P.O.C./S) |                             |   |   |
| 1302. | Pest inspection   | to                                       |                                     |                             |   |   |
| 1303. | Home Warranty   | to                                       |                                     |                             |   |   |
| 1304. |   | to                                       |                                     |                             |   |   |
| 1305. |   | to                                       |                                     |                             |   |   |
| 1306. |   | to                                       |                                     |                             |   |   |
| 1307. |   | to                                       |                                     |                             |   |   |
| 1308. |   | to                                       |                                     |                             |   |   |
| 1400. | TOTAL SETTLEMENT CHARGES (enter on lines 103 and 502, Sections j and k) |  |                                     |                             |   | 9,975.00  |

CERTIFICATION: I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Pennstar, LLC

Hopper Land Development South, LLC

Borrower's Agent

Seller

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to

Date October 28, 2005

WAR: I warrant to the United States on this or any other similar form. Penalties upon completion.

REV. HUD-1(3/86)



# A. Settlement Statement

U.S. Department of Housing  
and Urban Development


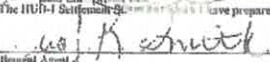
OMB No. 2502-0265

|  |  |                                  |  |  |  |                                |   |   |  |
|--|--|----------------------------------|--|--|--|--------------------------------|---|---|--|
| <b>B. Type of Loan</b>   |  |                                  |  | <b>6. File Number</b><br>BTG-0510-11416A                                   |  | <b>7. Loan Number</b>          |   | <b>8. Mortgage Insurance Case Number</b>  |  |
| 1. <input type="checkbox"/> FHA  |  | 2. <input type="checkbox"/> FmHA |  | 3. <input checked="" type="checkbox"/> Conv. Unins.                        |  | 4. <input type="checkbox"/> VA |   | 5. <input type="checkbox"/> Conv. Ins. 6. <input type="checkbox"/> None (Cash). |  |
| <p>C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c)" were paid outside the closing; they are shown here for information purposes and are not included in the totals.</p> |  |                                  |  |  |  |                                |   |   |  |
| <b>D. Name and Address of Borrower</b><br>Pennstar, LLC and Bass Enterprises, LLC<br>PO Box 1629<br>Foley, Alabama 36536   |  |                                  |  | <b>E. Name and Address of Seller</b><br>Hopper Land Development South, LLC |  |                                | <b>F. Name and Address of Lender</b>          |   |  |
| <b>G. Property Location</b><br>SR-T7S-R36 Parcels 1,2, and 3 apx. 247 acres +/-  |  |                                  |  | <b>H. Settlement Agent</b><br>BAY TITLE INSURANCE COMPANY                  |  |                                | <b>I. Settlement Date</b><br>October 28, 2005 |   |  |
| <b>J. SUMMARY OF BORROWER'S TRANSACTION:</b>   |  |                                  |  | <b>K. SUMMARY OF SELLER'S TRANSACTION:</b>                                 |  |                                |   |   |  |
| 100. GROSS AMOUNT DUE FROM BORROWER  |  |                                  |  | 400. GROSS AMOUNT DUE TO SELLER  |  |                                |   |   |  |
| 101. Contract sales price  |  |                                  |  | 401. Contract sales price  |  |                                |   |   |  |
| 102. Personal Property   |  |                                  |  | 402. Personal Property   |  |                                |   |   |  |
| 103. Settlement charges to borrower (line 1400)  |  |                                  |  | 403.   |  |                                |   |   |  |
| 104.   |  |                                  |  | 404.   |  |                                |   |   |  |
| 105.   |  |                                  |  | 405.   |  |                                |   |   |  |
| Adjustment for items paid by seller in advance   |  |                                  |  | Adjustment for items paid by seller in advance                             |  |                                |   |   |  |
| 106. City/town taxes to  |  |                                  |  | 406. City/town taxes to  |  |                                |   |   |  |
| 107. County taxes to   |  |                                  |  | 407. County taxes to   |  |                                |   |   |  |
| 108. Assessments to  |  |                                  |  | 408. Assessments to  |  |                                |   |   |  |
| 109.   |  |                                  |  | 409.   |  |                                |   |   |  |
| 110.   |  |                                  |  | 410.   |  |                                |   |   |  |
| 111.   |  |                                  |  | 411.   |  |                                |   |   |  |
| 112.   |  |                                  |  | 412.   |  |                                |   |   |  |
| 120. GROSS AMOUNT DUE FROM BORROWER  |  |                                  |  | 420. GROSS AMOUNT DUE TO SELLER  |  |                                |   |   |  |
| 140. AMOUNT PAID BY OR IN BEHALF OF BORROWER   |  |                                  |  | 500. REDUCTION IN AMOUNT DUE TO SELLER                                     |  |                                |   |   |  |
| 201. Deposit or earnest money  |  |                                  |  | 501. Excess deposit (see instruction)                                      |  |                                |   |   |  |
| 202. Principal amount of new loan(s)   |  |                                  |  | 502. Settlement charges to seller (line 1400)                              |  |                                |   |   |  |
| 203. Existing loan(s) taken subject to   |  |                                  |  | 503. Existing loan(s) taken subject to                                     |  |                                |   |   |  |
| 204.   |  |                                  |  | 504. Payoff of first mortgage loan   |  |                                |   |   |  |
| 205.   |  |                                  |  | 505. Payoff of second mortgage loan  |  |                                |   |   |  |
| 206.   |  |                                  |  | 506.   |  |                                |   |   |  |
| 207.   |  |                                  |  | 507.   |  |                                |   |   |  |
| 208.   |  |                                  |  | 508.   |  |                                |   |   |  |
| 209.   |  |                                  |  | 509.   |  |                                |   |   |  |
| Adjustment for items unpaid by seller  |  |                                  |  | Adjustment for items unpaid by seller                                      |  |                                |   |   |  |
| 210. City/town taxes to  |  |                                  |  | 510. City/town taxes to  |  |                                |   |   |  |
| 211. County taxes to 10-01-2005 to 10-25-2005  |  |                                  |  | 511. County taxes to   |  |                                |   |   |  |
| 212. Assessments to  |  |                                  |  | 512. Assessments to  |  |                                |   |   |  |
| 213.   |  |                                  |  | 513.   |  |                                |   |   |  |
| 214.   |  |                                  |  | 514.   |  |                                |   |   |  |
| 215.   |  |                                  |  | 515.   |  |                                |   |   |  |
| 216.   |  |                                  |  | 516.   |  |                                |   |   |  |
| 217.   |  |                                  |  | 517.   |  |                                |   |   |  |
| 218.   |  |                                  |  | 518.   |  |                                |   |   |  |
| 219.   |  |                                  |  | 519.   |  |                                |   |   |  |
| 220. TOTAL PAID BY/FOR BORROWER  |  |                                  |  | 520. TOTAL REDUCTION AMOUNT DUE SELLER                                     |  |                                |   |   |  |
| 300. CASH AT SETTLEMENT FOR OR TO BORROWER   |  |                                  |  | 600. CASH AT SETTLEMENT TO OR FROM SELLER                                  |  |                                |   |   |  |
| 301. Gross amount due from borrower (line 120)   |  |                                  |  | 601. Gross amount due to seller (line 420)                                 |  |                                |   |   |  |
| 302. Less amount paid by/for borrower (line 220)   |  |                                  |  | 602. Less reduction amount due seller (line 520)                           |  |                                |   |   |  |
| 303. CASH DUE FROM BORROWER  |  |                                  |  | 603. CASH SELLER   |  |                                |   |   |  |

REV. HUD-1 (3/86)

| SETTLEMENT CHARGES:                            |   |  |                             | PAID FROM<br>BORROWER'S<br>FUNDS AT<br>SETTLEMENT | PAID FROM<br>SELLER'S<br>FUNDS AT<br>SETTLEMENT |
|--|---|--|-----------------------------|---|---|
| 700.   | TOTAL SALES/BROKER'S COMMISSION based on price \$                       |  |                             | @   | %   |
| Division of commission (line 700) as follows:  |   |  |                             |   |   |
| 701.   |   |  |                             | to  |   |
| 702.   |   |  |                             | to  |   |
| 703.   | Commission paid at settlement   |  |                             |   |   |
| 704.   |   |  |                             | to  |   |
| 800.   | ITEMS PAYABLE IN CONNECTION WITH LOAN                                   |  |                             |   |   |
| 801.   | Loan Origination Fee  | % of                                     | to                          |   |   |
| 802.   | Loan Discount   | % of                                     | to                          |   |   |
| 803.   | Appraisal Fee   |  | to                          |   |   |
| 804.   | Credit Report   |  | to                          |   |   |
| 805.   | Lender's Inspection Fee   |  | to                          |   |   |
| 806.   | Underwriting Fee  |  | to                          |   |   |
| 807.   | Doc Preparation Fee   |  | to                          |   |   |
| 808.   | Tax Service Fee   |  | to                          |   |   |
| 809.   | Flood Certification Fee   |  | to                          |   |   |
| 810.   |   |  | to                          |   |   |
| 811.   |   |  | to                          |   |   |
| 812.   |   |  | to                          |   |   |
| 813.   |   |  | to                          |   |   |
| 900.   | ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE                          |  |                             |   |   |
| 901.   | Interest from   |  | to @ \$ /day                |   |   |
| 902.   | Mortgage Insurance premium for  |  | to                          |   |   |
| 903.   | Hazard Insurance premium for  |  | to                          |   |   |
| 904.   |   |  | to                          |   |   |
| 905.   |   |  | to                          |   |   |
| 1000.  | RESERVES DEPOSITED WITH LENDER FOR                                      |  |                             |   |   |
| 1001.  | Hazard Insurance  | mo. @ \$                                 | /mo.                        |   |   |
| 1002.  | Mortgage Insurance  | mo. @ \$                                 | /mo.                        |   |   |
| 1003.  | City property taxes   | mo. @ \$                                 | /mo.                        |   |   |
| 1004.  | County property taxes   | mo. @ \$                                 | /mo.                        |   |   |
| 1005.  | Annual assessments  | mo. @ \$                                 | /mo.                        |   |   |
| 1006.  |   | mo. @ \$                                 | /mo.                        |   |   |
| 1007.  |   | mo. @ \$                                 | /mo.                        |   |   |
| 1008.  | Aggregate Escrow Adjustment   |  |                             |   |   |
| 1100.  | TITLE CHARGES   |  |                             |   |   |
| 1101.  | Settlement or closing fee   | to                                       | Buy Title Insurance Company | 200.00  |   |
| 1102.  | Abstract or title search  | to                                       |                             |   |   |
| 1103.  | Title examination   | to                                       |                             |   |   |
| 1104.  | Title insurance binder  | to                                       |                             |   |   |
| 1105.  | Document preparation  | to                                       |                             |   |   |
| 1106.  | Notary fees   | to                                       |                             |   |   |
| 1107.  | Attorney's fees   | to                                       |                             |   |   |
| (includes above items No. 1102, 1103 and 1104) |   |  |                             |   |   |
| 1108.  | Title insurance   | to                                       |                             |   |   |
| (includes above items No. 1102, 1103 and 1104) |   |  |                             |   |   |
| 1109.  | Lender's coverage   | \$                                       |                             |   |   |
| 1110.  | Owner's coverage  | \$                                       | 4,880,000.00                |   |   |
| 1111.  | Document Printing Fee   |  |                             |   |   |
| 1112.  | Courier Fee   |  |                             |   |   |
| 1113.  | Reissue Credit  |  |                             |   |   |
| 1200.  | GOVERNMENT RECORDING AND TRANSFER CHARGES                               |  |                             |   |   |
| 1201.  | Recording fees  | Deed \$ 19.00 ; Mortgage \$ ; Release \$ |                             | 19.00   |   |
| 1202.  | City/County tax/stamps  | Deed \$ ; Mortgage \$                    |                             |   |   |
| 1203.  | State tax/stamps  | Deed \$ 4,880.00 ; Mortgage \$           |                             | 4,880.00  |   |
| 1204.  |   |  |                             |   |   |
| 1205.  |   | to                                       |                             |   |   |
| 1300.  | ADDITIONAL SETTLEMENT CHARGES   |  |                             |   |   |
| 1301.  | Survey  | to                                       |                             |   |   |
| 1302.  | Pest inspection   | to                                       |                             |   |   |
| 1303.  | Home Warranty   | to                                       |                             |   |   |
| 1304.  |   | to                                       |                             |   |   |
| 1305.  |   | to                                       |                             |   |   |
| 1306.  |   | to                                       |                             |   |   |
| 1307.  |   | to                                       |                             |   |   |
| 1308.  |   | to                                       |                             |   |   |
| 400.   | TOTAL SETTLEMENT CHARGES (enter on lines 103 and 502, Sections I and K) |  |                             |   | 5,099.00  |

CERTIFICATION: I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

By:   
 Buyer  
 The HUD-1 Settlement Statement has been prepared by a true and accurate account of this transaction. I have caused the funds to be disbursed to the Seller.  
 By:   
 Seller  
 Settlement Agent  
 WARNING: It is a crime to knowingly make a false statement to the United States on this or any other similar form. Penalties upon conviction, U.S. Code Section 1001 and section 1010.

Hopper Land Development South, LLC  
 Date: October 28, 2005



# A. Settlement Statement

U.S. Department of Housing  
and Urban Development

OMB No. 2502-0265

|   |  |  |  |   |   |  |  |  |  |
|---|--|--|--|---|---|--|--|--|--|
| <b>B. Type of Loan</b>  |  |  |  | <b>6. File Number</b>                               |   | <b>7. Loan Number</b>                    |  | <b>8. Mortgage Insurance Case Number</b> |  |
| 1. <input type="checkbox"/> FHA   |  | 2. <input type="checkbox"/> FmHA       |  | 3. <input checked="" type="checkbox"/> Conv. Unins. |   | BTG-0510-11416A                          |  |  |  |
| 4. <input type="checkbox"/> VA  |  | 5. <input type="checkbox"/> Conv. Ins. |  | 6. <input type="checkbox"/> None (Cash)             |   |  |  |  |  |
| <b>C. Note:</b> This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for information purposes and are not included in the totals. |  |  |  |   |   |  |  |  |  |
| <b>D. Name and Address of Borrower</b>  |  |  |  | <b>E. Name and Address of Seller</b>                |   |  |  | <b>F. Name and Address of Lender</b>     |  |
| Pennstar, LLC and Bass Enterprises, LLC<br>PO Box 1629<br>Foley, Alabama 36536  |  |  |  | Hopper Land Development South, LLC                  |   |  |  |  |  |
| <b>G. Property Location</b>   |  |  |  |   |   | <b>H. Settlement Agent</b>               |  |  |  |
| S8-T7S-R36 Parcels 1,2, and 3 apx. 247 acres +/-  |  |  |  |   |   | BAY TITLE INSURANCE COMPANY              |  |  |  |
|   |  |  |  |   |   | <b>Place of Settlement</b>               |  | <b>I. Settlement Date</b>                |  |
|   |  |  |  |   |   | 117 COVE AVENUE<br>GULF SHORES, AL 36542 |  | October 28, 2005                         |  |
| <b>J. SUMMARY OF BORROWER'S TRANSACTION:</b>  |  |  |  |   | <b>K. SUMMARY OF SELLER'S TRANSACTION:</b>            |  |  |  |  |
| <b>100. GROSS AMOUNT DUE FROM BORROWER</b>  |  |  |  |   | <b>400. GROSS AMOUNT DUE TO SELLER</b>                |  |  |  |  |
| 101. Contract sales price 4,880,000.00  |  |  |  |   | 401. Contract sales price                             |  |  |  |  |
| 102. Personal Property  |  |  |  |   | 402. Personal Property                                |  |  |  |  |
| 103. Settlement charges to borrower (line 1400) 5,099.00  |  |  |  |   | 403.  |  |  |  |  |
| 104.  |  |  |  |   | 404.  |  |  |  |  |
| 105.  |  |  |  |   | 405.  |  |  |  |  |
| <b>Adjustment for items paid by seller in advance</b>   |  |  |  |   | <b>Adjustment for items paid by seller in advance</b> |  |  |  |  |
| 106. City/town taxes to   |  |  |  |   | 406. City/town taxes to                               |  |  |  |  |
| 107. County taxes to  |  |  |  |   | 407. County taxes to                                  |  |  |  |  |
| 108. Assessments to   |  |  |  |   | 408. Assessments to                                   |  |  |  |  |
| 109.  |  |  |  |   | 409.  |  |  |  |  |
| 110.  |  |  |  |   | 410.  |  |  |  |  |
| 111.  |  |  |  |   | 411.  |  |  |  |  |
| 112.  |  |  |  |   | 412.  |  |  |  |  |
| <b>120. GROSS AMOUNT DUE FROM BORROWER 4,885,099.00</b>   |  |  |  |   | <b>420. GROSS AMOUNT DUE TO SELLER</b>                |  |  |  |  |
| <b>200. AMOUNT PAID BY OR IN BEHALF OF BORROWER</b>   |  |  |  |   | <b>500. REDUCTION IN AMOUNT DUE TO SELLER</b>         |  |  |  |  |
| 201. Deposit or earnest money 37,195.00   |  |  |  |   | 501. Excess deposit (see instruction)                 |  |  |  |  |
| 202. Principal amount of new loan(s)  |  |  |  |   | 502. Settlement charges to seller (line 1400)         |  |  |  |  |
| 203. Existing loan(s) taken subject to  |  |  |  |   | 503. Existing loan(s) taken subject to                |  |  |  |  |
| 204.  |  |  |  |   | 504. Payoff of first mortgage loan                    |  |  |  |  |
| 205.  |  |  |  |   | 505. Payoff of second mortgage loan                   |  |  |  |  |
| 206.  |  |  |  |   | 506.  |  |  |  |  |
| 207.  |  |  |  |   | 507.  |  |  |  |  |
| 208.  |  |  |  |   | 508.  |  |  |  |  |
| 209.  |  |  |  |   | 509.  |  |  |  |  |
| <b>Adjustment for items unpaid by seller</b>  |  |  |  |   | <b>Adjustment for items unpaid by seller</b>          |  |  |  |  |
| 210. City/town taxes to   |  |  |  |   | 510. City/town taxes to                               |  |  |  |  |
| 211. County taxes 10-01-2005 to 10-28-2005 28.35  |  |  |  |   | 511. County taxes to                                  |  |  |  |  |
| 212. Assessments to   |  |  |  |   | 512. Assessments to                                   |  |  |  |  |
| 213.  |  |  |  |   | 513.  |  |  |  |  |
| 214.  |  |  |  |   | 514.  |  |  |  |  |
| 215.  |  |  |  |   | 515.  |  |  |  |  |
| 216.  |  |  |  |   | 516.  |  |  |  |  |
| 217.  |  |  |  |   | 517.  |  |  |  |  |
| 218.  |  |  |  |   | 518.  |  |  |  |  |
| 219.  |  |  |  |   | 519.  |  |  |  |  |
| <b>220. TOTAL PAID BY/FOR BORROWER 37,223.35</b>  |  |  |  |   | <b>520. TOTAL REDUCTION AMOUNT DUE SELLER</b>         |  |  |  |  |
| <b>300. CASH AT SETTLEMENT FOR OR TO BORROWER</b>   |  |  |  |   | <b>600. CASH AT SETTLEMENT TO OR FROM SELLER</b>      |  |  |  |  |
| 301. Gross amount due from borrower (line 120) 4,885,099.00   |  |  |  |   | 601. Gross amount due to seller (line 420)            |  |  |  |  |
| 302. Less amount paid by/f for borrower (line 220) 37,223.35  |  |  |  |   | 602. Less reduction amount due seller (line 520)      |  |  |  |  |
| <b>303. CASH DUE FROM BORROWER 4,847,875.65</b>   |  |  |  |   | <b>603. CASH SELLER</b>                               |  |  |  |  |





STATE OF ALABAMA  
COUNTY OF BALDWIN

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that Hopper Land Development South, LLC, a limited liability company, the Grantor, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, in cash, and for other good and valuable consideration, hereby acknowledged to have been paid to Grantor by Pennstar, LLC and Bass Enterprises, LLC, the Grantees, does hereby, subject to all matters hereinafter mentioned, GRANT, BARGAIN, SELL and CONVEY unto Pennstar, LLC an undivided one-half (1/2) interest and unto Bass Enterprises, LLC an undivided one-half (1/2) interest, as tenants in common, and to their respective successors and assigns, in fee simple, in and to all that real property situate in the County of Baldwin, State of Alabama, described as follows, to-wit:

See Exhibit "A" attached hereto and made a part hereof.

EXCEPTING THEREFROM such oil, gas and other minerals in, on and under said real property, together with all rights in connection therewith, as have previously been reserved by or conveyed by others.

TOGETHER WITH ALL AND SINGULAR, the rights, members, privileges and appurtenances thereunto belonging, or in anywise appertaining; TO HAVE AND TO HOLD the above described property unto the said Grantees, as tenants in common, in accordance with the respective undivided interests hereinabove stated, and to their respective successors and assigns, in fee simple, FOREVER.

THE CONVEYANCE IS SUBJECT TO THE FOLLOWING:

1. Restrictive covenants, reservations, easements, rights-of-way and building set back lines, if any, applicable to said property of record in the Office of the Judge of Probate, Baldwin County, Alabama.
2. Any claim or dispute which might arise by virtue of the fences not being on the true and correct property lines as shown on survey by Survey Concepts, Inc., dated October 19, 2005.

All recording references are to the records in the Office of the Judge of Probate, Baldwin County, Alabama.

AND except as to taxes hereafter falling due, and except as to the above restrictions, reservations, rights of way and easements, all of which are assumed by the said Grantees, Grantor does, for itself and its successors and assigns, hereby covenant with Grantees that it is seized of an indefeasible estate in fee simple in said property, that said property is free and clear of all encumbrances, and that it does hereby WARRANT AND WILL FOREVER DEFEND the title to said property unto Grantees, their respective successors and assigns, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has caused this conveyance to be executed by its

Marguerite who is thereunto duly authorized on this the 28<sup>th</sup> day of October, 2005.

Hopper Land Development South, LLC

By: Marguerite (SEAL)

Its: Marguerite

State of Alabama, Baldwin County  
I certify this instrument was filed  
and fees collected on  
2005 November - 7 9:50 AM  
Instrument Number 334538 Pages 3  
Recording 9.88 Mortgage  
Fees 488.88 Min Jct  
Index 5.00  
Hortan T. Jones, Judge of Probate.

13708 V  
86545 V  
66538 V  
31756 V  
Ant 18  
094550



STATE OF Georgia  
COUNTY OF Cobb

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that Wayne Hopper, whose name as Manger of Hopper Land Development South, LLC, a limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me that, being informed of the contents of the conveyance, he as such Wayne Hopper executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal of office this 27th day of Oct, 2005.

Sheresa A. Cochran  
Notary Public  
My commission expires: Nov-28-2008



Grantee's Address:

PO Box 1629  
Foley, AL 36536

This Instrument Prepared By:  
David P. Slepian, P.C.  
1110 Hillcrest Rd. Suite 1A  
Mobile, Alabama 36695



2,440,000  
consideration

STATE OF ALABAMA  
COUNTY OF BALDWIN

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that Ida Sawyer Nolte, also known as Ida Nancy Nolte and George J. Nolte, Husband and Wife, John H. Nolte, a married man and George Mackey Nolte, a married man, the Grantors, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, in cash, and for other good and valuable consideration, hereby acknowledged to have been paid to Grantors by Hopper Land Development South, LLC, the Grantee, does hereby, subject to all matters hereinafter mentioned, GRANT, BARGAIN, SELL and CONVEY unto the said Grantee, its successors and assigns, in fee simple, all that real property situate in the County of Baldwin, State of Alabama, described as follows, to-wit:

TAX ID 60-83-08-0-000-00100, TAX ID 60-83-31-0-000-01900, TAX ID 60-83-31-0-000-02000, AND A PORTION OF TAX ID 60-83-08-0-000-00600 SAID PROPERTY LIES IN GRANT SECTION 31, TOWNSHIP 8 SOUTH, RANGE 3 EAST, BALDWIN COUNTY, ALABAMA AND GRANT SECTION 8, TOWNSHIP 8 SOUTH, RANGE 3 EAST, BALDWIN COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY OF BAY ROAD EAST AND THE COMMON GRANT SECTION LINE BETWEEN GRANT SECTION 30, TOWNSHIP 8 SOUTH, RANGE 3 EAST, BALDWIN COUNTY, ALABAMA AND GRANT SECTION 3, TOWNSHIP 8 SOUTH, RANGE 3 EAST, BALDWIN COUNTY, ALABAMA; THENCE ALONG THE SAID GRANT SECTION LINE S 31°30'00"E, 82.18 FEET TO AN IRON PIN ON THE SOUTH RIGHT-OF-WAY OF BAY ROAD EAST (60' R/W) AND BEING THE POINT OF BEGINNING; THENCE ALONG SAID GRANT SECTION LINE S31°30'00"E, 3280.02 FEET TO AN IRON PIN; THENCE S 58°20'00"W, 2103.50 FEET TO AN IRON PIN; THENCE N 31°53'26"W, 398.94 FEET TO AN IRON PIN; THENCE S58°04'34" W, 619.53 FEET TO AN IRON PIN ON THE EAST RIGHT-OF-WAY OF BALDWIN COUNTY ROAD #12 (80' R/W); THENCE ALONG SAID RIGHT-OF-WAY OF BALDWIN COUNTY ROAD #12, N 31°48' 25" W, 2818.25 FEET TO AN IRON PIN; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY OF BALDWIN COUNTY ROAD #12, A CURVE TO THE LEFT AN ARC DISTANCE OF 416.59 FEET, SAID CURVE HAVING A CHORD OF N39°57'35" W, 415.80 FEET AND A RADIUS OF 1941.26 FEET TO AN IRON PIN; THENCE N30°12'33"W, 667.28 FEET TO AN IRON PIN; THENCE N 57°25'39" E 717.62 FEET TO AN IRON PIN; THENCE N 31°30' 00"W 245.11 FEET TO AN IRON PIN ON THE SOUTH RIGHT-OF-WAY OF BAY ROAD EAST (60' R/W); THENCE ALONG SAID RIGHT OF WAY OF BAY ROAD EAST, N 90°00' 00" E, 2429.69 FEET TO AN IRON PIN AND THE POINT OF BEGINNING. SAID TRACT CONTAINS 247.010 ± OR - ACRES MORE OR LESS.

EXCEPTING THEREFROM such oil, gas and other minerals in, on and under said real property, together with all rights in connection therewith, as have previously been reserved by or conveyed by others.

TOGETHER WITH ALL AND SINGULAR, the rights, members, privileges and appurtenances thereto belonging, or in anywise appertaining; TO HAVE AND TO HOLD the above described property unto the said Grantee, its successors and assigns, FOREVER.

THE CONVEYANCE IS SUBJECT TO THE FOLLOWING:

1. Restrictive covenants, reservations, easements, rights-of-way and building set back lines, if any, applicable to said property of record in the Office of the Judge of Probate, Baldwin County, Alabama.
2. Any claim or dispute which might arise by virtue of the fences not being on the true and correct property lines as shown on survey by Survey Concepts, Inc., dated October 19, 2005.

All recording references are to the records in the Office of the Judge of Probate, Baldwin County, Alabama.

AND except as to taxes hereafter falling due, and except as to the above restrictions, reservations, rights of way and easements, all of which are assumed by the said Grantee, Grantors do for themselves and their heirs and assigns, hereby covenant with Grantee that they are seized of an indefeasible estate in fee simple in said property, that said property is free and clear of all encumbrances, and that they do hereby WARRANT AND WILL FOREVER DEFEND the title to said property unto Grantee, its successors and assigns, against the lawful claims of all persons whomsoever.

John H. Nolte and George Mackey Nolte do hereby represent and covenant that the herein property does not constitute homestead property for themselves or for their spouses within the meaning of Title 6-10-3, Code of Alabama, 1975.

IN WITNESS WHEREOF, the Grantors have executed these presents on this the 28th day of October, 2005.

EXHIBIT

G

934549

STATE OF Alabama

COUNTY OF Baldwin

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that, John H. Nolte, a married man, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 28<sup>th</sup> day of October, 2005.

Judy K. Smith  
Notary Public  
My Commission Expires:

JUDY K. SMITH  
Notary Public, Baldwin County  
Alabama State At Large  
My Commission Expires  
August 26, 2008

STATE OF Alabama

COUNTY OF Baldwin

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that, George Mackey Nolte, a married man, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 28<sup>th</sup> day of October, 2005.

Judy K. Smith  
Notary Public  
My Commission Expires:

JUDY K. SMITH  
Notary Public, Baldwin County  
Alabama State At Large  
My Commission Expires  
August 26, 2008

Grantee's Address:

1266 West Paces Ferry Rd, Ste 276  
Atlanta, GA 30327

This Instrument Prepared By:  
David P. Stepien, P.C.  
1110 Wilcrest Rd, Suite 7A  
Mobile, Alabama 36688

State of Alabama, Baldwin County  
I certify this instrument was filed  
and taxes collected on:

2005 November - 7 9: 56M

Instrument Number 934549 Pages 3  
Recording 5.00 Mortgage  
Fund 2448.00 Min Tax  
Index 3.00 DU 5.00  
Archive 3.00  
Adrian L. Johns, Judge of Probate



Ida Sawyer Nolte (SEAL)  
Ida Sawyer Nolte, also known as Ida Nancy Nolte

George J. Nolte (SEAL)  
George J. Nolte

John H. Nolte (SEAL)  
John H. Nolte

George Mackey Nolte (SEAL)  
George Mackey Nolte

STATE OF Alabama  
COUNTY OF Baldwin

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that, Ida Sawyer Nolte, also known as Ida Nancy Nolte, a married woman, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 28th day of October, 2005.

Judy K. Smith  
Notary Public  
My Commission Expires:

JUDY K. SMITH  
Notary Public, Baldwin County,  
Alabama State At Large  
My Commission Expires  
August 26, 2008



STATE OF Alabama  
COUNTY OF Baldwin

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that, George J. Nolte, a married man, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 28th day of October, 2005.

Judy K. Smith  
Notary Public  
My Commission Expires:

JUDY K. SMITH  
Notary Public, Baldwin County,  
Alabama State At Large  
My Commission Expires  
August 26, 2008





PRESS FIRMLY you are writing through 4 copies.

# PURCHASE AGREEMENT



LISTING COMPANY: Exit

SELLING COMPANY: Exit

EFFECTIVE DATE: (To be completed by the last party to sign or initial acceptance of the final offer.)  
Date 6-28-05 Initials GN-JM

PLEASE READ CAREFULLY: This is a legally binding agreement. If you have any questions, please seek advice of legal counsel. You may retain legal counsel to review and/or prepare this Purchase Agreement for you. This is a preprinted Purchase Agreement and prior to its signing by all parties is subject to negotiation between the parties to the Agreement. Wherever Purchaser or Seller is mentioned, below, if there is more than one Purchaser or more than one Seller party to this agreement, it is understood that the words Purchaser or Seller shall represent all Purchasers or all Sellers.

## REAL ESTATE CONSUMER'S AGENCY DISCLOSURE:

THE LISTING COMPANY Exit IS:

- Two blocks may be checked)
- ☒ An agent of the seller
  - ☐ An agent of the buyer
  - ☐ An agent of both the seller and buyer and is acting as a limited consensual dual agent
  - ☐ Assisting the buyer seller as a transaction broker
  - ☐ Seller(s) Initials \_\_\_\_\_

THE SELLING COMPANY Exit IS:

- (Two blocks may be checked)
- ☐ An agent of the seller
  - ☒ An agent of the buyer
  - ☐ An agent of both the seller and buyer and is acting as a limited consensual dual agent
  - ☐ Assisting the buyer seller as a transaction broker
  - ☒ Purchaser(s) Initials GN-JM

## PURCHASER'S OFFER:

1. THE UNDERSIGNED, HEREDINAFTER CALLED THE PURCHASER, HEREBY OFFERS TO PURCHASE THE PROPERTY Located in the City of Magnolia Springs, County of Baldwin, Alabama, commonly known as:

Sec 8 TWP 78 Rm 3 E Parcel 1203 and legally described as: 247 Acres in  
for the sum of (exactly) two million four hundred seventy thousand dollars and 00/100 Dollars (\$) 2,470,000

2. THE TERMS OF THE PURCHASE SHALL BE INDICATED BY "X" BELOW (UNMARKED ITEMS DO NOT APPLY):

- ☐ CASH: The full purchase price upon execution and delivery of Warranty Deed/Bill of Sale.
- ☒ NEW CONVENTIONAL MORTGAGE: The full purchase price upon execution and delivery of Warranty Deed/Bill of Sale, contingent upon Purchaser's ability to obtain a 30 year fixed (type) mortgage in the amount of \$ \_\_\_\_\_ at an annual interest rate not to exceed \_\_\_\_\_%, computed monthly, for which Purchaser agrees to apply for immediately and accept promptly if tendered. All prepaid and loan closing costs which lender requires borrower to pay shall be paid by Purchaser. Discount points not to exceed \_\_\_\_\_% of mortgage amount to be paid by ☐ Purchaser ☐ Seller. Origination fee not to exceed \_\_\_\_\_% of mortgage amount to be paid by ☐ Purchaser ☐ Seller. All other lender fees to be paid by ☐ Purchaser ☐ Seller, unless otherwise specified herein. ☐ Purchaser ☐ Seller to make repairs or replacements as required for mortgage loan purposes, not to exceed \$ \_\_\_\_\_, not including possible repairs as may be required by paragraphs 5 and 9 below.
- ☐ PRE-QUALIFICATION: Purchaser has been pre-approved for loan in the amount of \$ \_\_\_\_\_ by \_\_\_\_\_ lender. Written verification from lender must be attached to this Purchase Agreement.

☐ VENDOR'S LIEN DEED: \$ \_\_\_\_\_ upon execution and delivery of Warranty Deed/Bill of Sale reserving a Vendor's Lien wherein the balance of \$ \_\_\_\_\_ shall be amortized for a period of \_\_\_\_\_ years and shall be payable in \_\_\_\_\_ monthly/or \_\_\_\_\_ annual installments of \$ \_\_\_\_\_ including ☐ plus interest at \_\_\_\_\_% per annum. Interest to start on date of closing and the first payment to become due \_\_\_\_\_ after closing. There ☐ shall ☐ shall not be a prepayment penalty of \_\_\_\_\_% of the unpaid balance. Vendor's Lien ☐ shall ☐ shall not be assumable without written consent of lien holder, and the Vendor's Lien or Note ☐ shall ☐ shall not contain a late charge provision of \_\_\_\_\_% of payment due when paid more than \_\_\_\_\_ days after due date thereof. Purchaser agrees to provide at his/her expense a credit report, verification of income or other financial data satisfactory to Seller. The Vendor's Lien shall require Purchaser to pay all ad valorem taxes when due and to furnish hazard insurance coverage on buildings and improvements (and flood insurance if required by Seller) with standard mortgage clause. Purchaser to supply first year's insurance policy at closing and continue insurance coverage on the buildings and improvements for the term of the Vendor's Lien.

☐ FHA/VA MORTGAGE: SEE ATTACHED ADDENDUM  
OTHER MORTGAGE PROVISIONS: \_\_\_\_\_

APPRAISAL This offer ☐ is ☒ is not subject to property appraising for at least the purchase price. The Purchaser shall, however, have the privilege and option of proceeding with the consummation of the contract without regard to the amount of the appraised valuation.

3. ALL IMPROVEMENTS, PERMANENT FIXTURES AND APPURTENANCES ARE INCLUDED IN THE PURCHASE PRICE, EXCEPT: \_\_\_\_\_

4. NO ITEMS OF PERSONAL PROPERTY shall be transferred to purchaser unless specifically itemized herein. Fixtures and improvements located on Fairhope Single Tax Corporation property shall be part of the property and not considered personal.

ANY PERSONAL PROPERTY that does remain is of NO VALUE for appraisal and mortgage loan purposes unless otherwise noted.

5. PURCHASER HAS EXAMINED THIS PROPERTY and agrees to accept same in its present condition, except as may be specified herein. Heating, cooling and air-conditioning equipment, including window units, plumbing, and electrical systems and all included appliances shall be warranted by Seller to be in working order at time of conveyance. Providing utility availability, if necessary, for this inspection is the responsibility of the ☐ Purchaser ☐ Seller. Purchaser may be required to sign a final Walk-Through/Systems Check Inspection Form, indicating that the inspection was completed and that the property was acceptable, unless otherwise noted on the form. Purchaser understands that if a Sales Associate accompanies Purchaser on this final inspection it will be as a courtesy only and not as a person qualified to detect any defect. Cost of septic tank inspection and cost of well water testing, if any required, shall be paid for by ☐ Purchaser ☐ Seller.

INITIALS BELOW INDICATE RECEIPT OF PAGE 1 OF 3 OF THIS AGREEMENT  
SELLER(S) INITIALS GN-JM PURCHASER(S) INITIALS GN-JM

This Purchase Agreement is for the exclusive use of members of the Baldwin County Association of REALTORS®





6. PURCHASER IS AWARE that professional inspection of home structure and systems, and any other items of importance to Purchaser, are available by a representative of Purchaser's choosing. Sale ☐ is ☒ not subject to said inspection. If sale is subject to said inspection, Purchaser agrees to pay for same, and if said inspection is found to be unsatisfactory to Purchaser, Seller is to be notified in writing within \_\_\_\_\_ business days of acceptance of this agreement. Otherwise, this contingency will be considered removed at the expiration of such period.
7. A HOME WARRANTY subject to limitations, exclusions, and deductibles, ☐ shall ☒ shall not be furnished at expense of ☐ Purchaser ☒ Seller.
8. LEAD-BASED PAINT DISCLOSURE AND CONTINGENCY: Federal law requires that for all residential dwellings constructed prior to 1978, Purchaser is put on notice of his/her rights to test for lead-based paint. Check here ☐ if a lead-based paint warning is attached and made part of this Purchase Agreement.
9. SELLER SHALL FURNISH WRITTEN EVIDENCE, from a bonded and licensed termite control company, that a visual inspection by them of accessible areas of the dwelling, carport and garage indicated that the dwelling, carport and garage are free from active infestation by wood-destroying insects or fungus and damage caused by currently active infestation. The current termite contract, if any, is to be transferred to Purchaser at Purchaser's expense. If a Structural Damage Report is required by Lender, the cost shall be paid by ☐ Purchaser ☒ Seller.
10. ALL AD VALOREM TAXES, HOMEOWNERS ASSOCIATION DUES AND ANY RENTS being collected from existing tenants are to be prorated at time of closing. Purchaser to honor any confirmed rentals booked at time of closing at published rental rates. All security deposits, keys and lease or rental management agreements to be transferred to Purchaser at closing. NOTE: Taxes are prorated based upon current information furnished by the Revenue Commissioner's Office. Brokers and Real Estate Associates cannot and do not assume any responsibility for any change, modification or adjustment to the current tax assessment by the Revenue Commissioner's Office. If property is assessed under the CURRENT USE CLASSIFICATION, then any rollback or other additional assessment levied against property as a result of this sale shall be paid by ☐ Purchaser ☒ Seller.
11. PROPERTY ASSESSMENTS which become a lien on the property prior to closing date shall be paid by the Seller, without proration. Any public improvements, now installed but not yet a lien, shall be paid by ☐ Purchaser ☒ Seller. Any Homeowners Association assessments known to the parties at the time of the execution of Purchase Agreement that become due prior to closing shall be paid by ☐ Purchaser ☒ Seller. Homeowners Association assessments that have been approved by the Association which become due after closing shall be paid by ☐ Purchaser ☒ Seller.
12. A CURRENT SURVEY ☒ shall ☐ shall not be furnished prior to closing and paid for by ☐ Purchaser ☒ Seller.
13. A. PURCHASER to pay closing agent settlement fee, recording fee and mortgagee title insurance policy required by lender.  
B. SELLER to pay for preparation of Warranty Deed/Bill of Sale and Owner's Title Insurance Policy in the amount of the purchase price.
14. SALE SHALL BE CLOSED AND DEED/BILL OF SALE delivered on 10/28, 2005, or sooner, if mutually agreed upon in writing by Purchaser and Seller. Time shall be of the essence with all terms and conditions and particulars of this agreement. Title is to be taken in the names(s) of Bill Springer and Michael Weiss and/or assigns  
☒ with ☐ without right of survivorship, in a form satisfactory to Purchaser. The property is sold and is to be conveyed subject to mineral and mining rights not owned by Seller and subject to present zoning and flood plain classification, utility easements, covenants, restrictions and building setback lines. Seller owned mineral rights ☐ do ☒ do not convey.
15. A PERIOD OF THIRTY (30) DAYS from the date of closing, as stated in paragraph 14, shall be allowed for closing if the closing is delayed by reason of title defects that can be readily corrected.
16. A PERIOD OF TEN (10) DAYS from date of closing, as stated in paragraph 14, shall be allowed for closing if the terms of purchase require a new mortgage and lender issues a written unconditional commitment letter no later than the date of closing in paragraph 14 above but is delayed in consummating the mortgage.
17. RISK OR LOSS BY FIRE or other casualty, condemnations shall be on the Seller until title is conveyed.
18. POSSESSION TO BE GIVEN the Purchaser ☐ at closing or ☐ \_\_\_\_\_ days after closing. In the event Seller retains possession of the property beyond this date, Seller shall pay \$ \_\_\_\_\_ per day as rental, but will vacate by \_\_\_\_\_, 20\_\_\_\_, ☐ a.m. ☐ p.m., without further notice. Seller does hereby guarantee that at the date of surrender of occupancy by the Seller, the property shall be in the same condition as at the day of closing. Seller shall provide to Purchaser keys and/or means to operate all property locks, mailboxes and security devices at date of possession.
19. FOR VALUABLE CONSIDERATION, Seller gives the Listing Broker above named until 6/28, 2005, written acceptance of this offer and agrees that this offer, when signed, will constitute a binding agreement between the Purchaser and Seller. Purchaser herewith deposits \$ 40,000.00 in the form of ☐ cash ☒ check to be held in escrow by Selling Broker (herein referred to as Holder) upon acceptance of this offer and to be applied to the purchase price of the property. If this offer is not accepted, the earnest money deposit is to be returned to the Purchaser. If the terms of purchase are contingent upon ability to obtain financing as specified which cannot be met, this deposit to be refunded upon written agreement signed by Purchaser and Seller. The parties to this Agreement understand and acknowledge that disbursement of earnest money shall be as follows: (A) at closing; (B) upon written agreement signed by Purchaser and Seller; or (C) upon court order. In the event a dispute arises between Purchaser and Seller as to the final disposition of the earnest money, Holder shall be authorized to interplead the earnest money into a Court of competent jurisdiction. Holder shall be entitled to be compensated by the party who does not prevail in the Interpleader Action for its costs and expenses, including reasonable attorney's fees incurred in filing said Interpleader. All parties to this Agreement agree that Holder may deposit the earnest money in an interest-bearing escrow/trust account and that Holder will retain the interest earned on said deposit. In the event the earnest money check is returned for insufficient funds or otherwise not honored by the bank drawn upon and Purchaser has not delivered good funds to Holder within three (3) days of bank's notice to Holder, then and in that event, the Seller, at his sole discretion, shall have the right to terminate this Agreement by giving written notice to the Purchaser.



20. Other provisions: Contingent upon wellhead delineation being acceptable and  
60 day due diligence and city water @ on property

## 21. DEFAULT/LEGAL REMEDIES:

A. Default by PURCHASER: In the event that PURCHASER fails to consummate this Agreement, SELLER shall have the right to pursue any remedy available at law or in equity as a result of such breach, including specifically, without limitation, the right (a) to RETAIN the EARNEST MONEY, (b) the right to ENFORCE SPECIFIC PERFORMANCE of this Agreement, and (c) the right to TERMINATE this AGREEMENT, and thereafter RECOVER DAMAGES against PURCHASER for breach by PURCHASER thereof.

B. Default by SELLER: In the event that SELLER fails to consummate this Agreement, PURCHASER shall have the right to pursue any remedy available at law or in equity as a result of such breach, including specifically, without limitation, the right (a) to receive the RETURN of the EARNEST MONEY, (b) the right to ENFORCE SPECIFIC PERFORMANCE of the obligation of Seller to execute the documents required to convey the Real Property to PURCHASER, and (c) the right to TERMINATE this AGREEMENT and thereafter RECOVER DAMAGES against SELLER for breach by SELLER thereof.

C. ARBITRATION: If an Arbitration clause is attached to this Purchase Agreement as an addendum and is signed by all Purchasers at Sellers to this Purchase Agreement, the same shall supersede the remedies provided for elsewhere.

22. THE PURCHASE PRICE AND TERMS OF THIS SALE MAY BE DISCLOSED, after closing, by the real estate companies for use in the ordinary conduct of their business. Real Estate Brokers/Sales Associates may benefit financially as a result of recommending real estate-related services to clients and customers. All parties to this Agreement are advised to also seek other services or compare cost of services in these related fields and do business with whomsoever or wherever is most desirable to them.

23. PURCHASER AND SELLER hereby acknowledge and confirm that this Purchase Agreement states the entire agreement between the parties hereto and no modification of this Agreement shall be binding unless attached hereto and signed by both Purchaser and Seller.

24. THE FACSIMILE TRANSMISSION of a signed copy hereof or any counteroffer to the other party or his/her Sales Associate, followed by facsimile acknowledgment of receipt, shall constitute delivery of said signed document. The parties agree to affirm such delivery by mailing or personally delivering a signed original copy to the other party or his/her Sales Associate.

25. ALL PARTIES TO THIS PURCHASE AGREEMENT understand and acknowledge that Listing Brokers/Selling Brokers and/or Sales Associates are not parties to this Purchase Agreement and as such do not assume any liability for performance or nonperformance of any parties to this agreement.

26. PURCHASER ACKNOWLEDGES RECEIPT of a copy of this Agreement and attached addenda, if any, which are made a part of this Purchase Agreement. Date: 6/27, 2005, 10:30 ☐ a.m. ☒ p.m.,

Purchaser X [Signature] (print) MICHAEL S. WEISS SS# \_\_\_\_\_  
Purchaser X [Signature] (print) Bill Springer SS# \_\_\_\_\_  
Purchaser's Address \_\_\_\_\_ Phone: (res) \_\_\_\_\_ (wk) \_\_\_\_\_

Witness X \_\_\_\_\_ Selling Associate: X [Signature] (res) 251-974-1623 (wk) 251-377-5236

27. SELLER'S ACCEPTANCE OF OFFER/RECEIPT OF ACCEPTANCE: Date: \_\_\_\_\_, 20\_\_\_\_, ☐ a.m. ☐ p.m.,  
The above offer is hereby accepted \_\_\_\_\_

In the event a counteroffer is made, it shall expire on \_\_\_\_\_, 20\_\_\_\_, ☐ a.m. ☐ p.m., if Purchaser has not given prior written acceptance. Seller acknowledges receipt of a copy of this Agreement and attached addenda, if any, which are made part of this Purchase Agreement.

Seller X [Signature] (print) George J. Nolte SS# \_\_\_\_\_  
Seller X [Signature] (print name as title is held) \_\_\_\_\_  
Seller X [Signature] (print) Ida Sawyer Nolte SS# 419-52-198  
(print name as title is held) \_\_\_\_\_  
Seller's Address \_\_\_\_\_ Phone: (res.) \_\_\_\_\_ (wk) \_\_\_\_\_

Witness X \_\_\_\_\_ Listing Associate: X [Signature] (res.) 978-2050 (wk) 626-2244

## 28. PURCHASER'S ACCEPTANCE OF COUNTEROFFER/RECEIPT OF ACCEPTANCE:

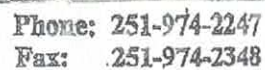
Purchaser acknowledges receipt of Seller's acceptance of Purchaser's offer. In the event this acceptance was subject to certain changes from the Purchaser's offer, the Purchaser agrees to accept said changes. All other provisions of the original offer remain unchanged.

Date: \_\_\_\_\_, 20\_\_\_\_, ☐ a.m. ☐ p.m., Purchaser X \_\_\_\_\_  
Witness X \_\_\_\_\_ Purchaser X \_\_\_\_\_

INITIALS BELOW INDICATE RECEIPT OF PAGE 3 OF 3 OF THIS AGREEMENT.  
SELLER(S) INITIALS \_\_\_\_\_ PURCHASER(S) INITIALS \_\_\_\_\_

This Purchase Agreement is for the exclusive use of members of the Baldwin County Association of REALTORS®







EXIT REALTY GULF SHORES  
3725 Gulf Shores Pkwy - Gulf Shores, AL 36542  
Phone 251-974-1288 \*\*\* Fax 251-974-1284

## \*\*\*ADDENDUM TO CONTRACT\*\*

DATE: 6-28-05

Addendum # 1 To Contract - Sec 8 Twp 75 Rng 3E  
Parcels 1, 2 & 3

In the contract dated 6/28/05 between

Bill Spruance & Michael Weiss, Purchaser and  
George & Tammy Nolte, Seller

Conveying the property commonly known as:

247 acres on Cty Rd. 12, Macaria Springs.

1. 3 acres to be kept out by sellers,  
making purchase price \$2,440,000.00
2. Purchase price to change from 2,770,000.00  
down to 2,440,000.00
- 3.

Seller: George & Tammy Nolte Date: 6-28-05  
Buyer: Bill Spruance & Michael Weiss Date: 6-28-05





Exit Realty - Orange Beach  
4161 Orange Beach Boulevard  
Orange Beach, AL 36561

**ADDENDUM**

In reference to the attached purchase agreement the following will apply:

INCEPTION DATE of CONTRACT - AMENDED TO  
DATE of ACCEPTANCE AND ESCROW DEPOSIT, 07/05/05.

~~THE DATE OF RECEIPT OF THE DEED AND CLOSING~~

SHALL BE BASED ON THIS DATE, AS HEREIN AGREED  
TO BY THE PARTIES.

[Signature]  
Purchaser

[Signature]  
Purchaser

Date: 5/8/05

Seller

Seller

Date:

## ASSIGNMENT

STATE OF ALABAMA  
COUNTY OF BALDWIN

KNOW ALL MEN BY THESE PRESENTS, that Michael S. Weiss and Bill Springer (collectively the "Assignor"), do hereby TRANSFER, SET OVER AND ASSIGN unto Pennstar, L.L.C., its successors or assigns (collectively "Assignee") that certain Conditional Real Estate Purchase Agreement bearing an Effective Date of June 28, 2005, and Addendum dated 9-25-05, by and between Assignor as "Purchaser" and George J. Nolte, Ida Sawyer Nolte (one and the same as Ida Nancy Nolte), and John H. Nolte, collectively as "Seller," the originals of which are attached hereto and incorporated herein by reference (the "Contract"), for and in consideration of the sum of SEVEN HUNDRED FIFTY THOUSAND (\$750,000.00) DOLLARS payable by Assignee as follows:

- (a) \$25,000 to Michael S. Weiss and \$25,000 to Bill Springer, both by wire transfer in c/o Michael S. Weiss, upon execution of this Assignment and delivery of same (with the original Contract attached) in escrow at Bay Title Insurance Company, Inc. ("Escrow Agent"), the receipt of said sum is hereby acknowledged by Assignor (See below for escrow instructions related to this Assignment and the original Contract); and
- (b) \$700,000 paid in escrow at Escrow Agent upon execution and delivery of this Assignment to Escrow Agent to be held in escrow and delivered to Assignor (i) upon closing of the Contract and acquisition of the Contract property by Assignee or (ii) upon the Contract Seller tendering full performance of the Contract Seller's obligations in accordance with the terms of the Contract; otherwise said sum of \$700,000 to be delivered to Assignee on the day following the Contract closing date;

And for the same consideration Assignor does hereby TRANSFER, SET OVER AND ASSIGN unto Assignee all of Assignor's right, title and interest that Assignor has by virtue of the Contract in and to the premises and property described therein, it being the intention of the Assignor to transfer to the Assignee the Contract and all of Assignor's rights thereunder, including without limitation all rights to any earnest money paid by Assignor as Purchaser under the terms of the Contract;

TO HAVE AND TO HOLD all of the same unto Assignee and Assignee's successors and assigns forever.

Assignor hereby warrants that Assignor is a legal and equitable owner of the Contract with full power to sell and assign the same free and clear of all liens or encumbrances whatsoever and that Assignor and Assignor's successors and assigns shall FOREVER WARRANT and DEFEND the title to the interest assigned herein against the lawful claims of all persons whomsoever.

This Assignment (with the original Contract attached), upon execution hereof by Assignor, shall be delivered in escrow to Escrow Agent to be held in escrow pursuant to the following instructions to deliver same to Assignor on the second day following the Contract closing date (a) in the event Contract Seller does not perform under the terms of the Contract and Assignee does not acquire the Contract property at the Contract closing date and (b) upon payment of the sum of \$50,000 by Assignor to Assignee on or before the second day following the Contract closing date; otherwise, this Assignment shall be delivered to Assignee on the third day following the Contract closing date.

The Contract and the Assignee's rights under this Assignment may be freely assigned to Assignee's affiliates but may not be assigned to non-affiliates without the prior written consent of Assignor.



The parties hereto agree to the following Escrow Agreement with the Escrow Agent:  
Pennstar00888A

EXHIBIT

I



1. Escrow Agent is authorized to proceed with the closing of the sale of real property pursuant to the terms, covenants and agreements set forth in the Contract as modified by the terms of this Assignment;
2. Assignor and Assignee shall direct and instruct Escrow Agent to disburse the escrow funds and property by written instruction, including this Assignment. Escrow Agent shall conduct said disbursement in accordance with the written instructions provided by Assignor and Assignee, including this Assignment.
3. In the event of any dispute with respect to the disposition of all or part of the escrow funds and property or any disagreement arising between the Assignor and Assignee and they fail to execute a joint direction to the Escrow Agent with respect to the disposition of the escrow funds and property, or in any other matter connected with this Escrow Agreement, Escrow Agent shall then act upon the final judgment of a court having jurisdiction of the controversy of the escrow funds and property, and may, if it is so advised, institute action for declaratory judgment, or interpleader, or take such other legal action as it deems advisable, and shall be reimbursed for all of its expenses, including attorney's fees, out of the escrow funds, and shall incur no obligation or liability to Assignor, Assignee or any other person for any action it takes or fails to take under such circumstances.
4. Except as specifically provided herein, the duties of the Escrow Agent hereunder are only such as are herein specifically provided, being purely ministerial in nature, and it shall not have responsibility in respect of the cash and property deposited with it other than faithfully to follow the instructions herein contained.
5. Escrow Agent shall not be liable for any error of judgment, or for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith.
6. Escrow Agent may, but shall not be required to, defend itself in any legal proceeding which may be instituted against it or it may, but shall not be required to institute legal proceedings in respect of the escrow funds and property, or any part thereof. Escrow Agent shall be indemnified and held harmless against the cost and expense of any such defense or action by the Borrower.
7. This Escrow Agreement shall be binding upon and inure to the benefit to the respective heirs, successors, and assigns of Assignor and Assignee and Escrow Agent.
8. This Escrow Agreement contains the sole and entire agreement and understanding of the parties with the respect of the entire subject matter hereof and any and all prior discussions, negotiations, commitments, letters of intent, memoranda, writings and understandings related hereto are hereby superseded.

 (SEAL)  
 Michael S. Weiner  
 (SEAL)  
 Hilary Springer

Given under my hand and seal on this the 15<sup>th</sup> day of September, 2005. October 2005



Robert J. Sheppard  
Notary Public State of Florida  
My commission expires: 12/17/44 2005

Given under my hand and seal on this the 3 day of Oct, 2005.

Notary Public-State of ALABAMA  
My commission expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: JAN 31, 2008  
BONDED THIRD NOTARY PUBLIC INTERESTED:

Pennstar00890A



Ms. Judy Smith  
Bay Title

251-948-7543

Re: 244-Acre Magnolia Springs Property

---

Judy:

You have informed us of a deficiency in Seller's delivery of acreage as called for by the Weiss / Springer contract, as assigned to Pennstar, L.L.C., "Assignee".

You have advised us that Assignee has requested an adjustment to their consideration, as set forth in the Assignment Agreement, of  $1.125 * \$ 10,000$ , or  $\$ 11,125$ , in consideration for the related deficiency, as determined by Assignee's review of the Property Survey and Seller's holdback delineation.

Please allow this letter to serve as our acceptance of a discount to the consideration provided for in our Assignment Agreement with Pennstar, L.L.C. in the amount of  $\$ 11,125$ .

Accordingly, please coordinate and affect the reallocation of this portion ( $\$ 11,125$ ) of Pennstar's funds placed in escrow ( $\$ 700,000$ ), resulting in a net distribution to Weiss / Springer of  $\$ 688,875$  as set forth by our Assignment Agreement.

Understood and Accepted:

By: 

Bill Springer

By: 

Michael Weiss

Date: October 28, 2005

Date: October 28, 2005

## APPENDIX 2



**Tilley's Alabama Equity § 10:3 (5th ed.)**

Tilley's Alabama Equity June 2018 Update  
Ally Windsor Howell, LL.M.

Chapter 10. Rescission of a Contract

§ 10:3. Grounds that will justify rescission

**(a) Fraud in the Inducement**

When one "is induced to enter into ... a contract by fraud, he has an election of remedies, either (1) to rescind the contract and sue for his money back, in which event he must give up possession of the property and restore all the benefits he received under it, or (2) affirm the contract, and sue for damages for the deceit, when he may retain the property, and its other benefits."<sup>1</sup> A deed is "absolutely void where the grantor's signature is obtained by fraud going to the nature of the instrument he was requested to sign." Likewise, a forged deed is void and completely ineffectual to pass title.<sup>2</sup>

Alabama law does not require a plaintiff seeking rescission of a deed based on an allegation of fraud to prove intent to deceive. The Ala. Code § 6-5-101 states "Misrepresentations of a material fact made willfully to deceive, or recklessly without knowledge, and acted on by the opposite party, or if made by mistake and innocently and acted on by the opposite party, constitute legal fraud."<sup>3</sup>

**(b) Mutual Mistake of Fact or Law**

A contract or conveyance may be reformed or rescinded based upon a mutual mistake of fact or law.<sup>4</sup> There are conditions and exceptions, however. "To justify rescission, a mistake of law must have related to a question, the answer to which was assumed as part of the fundamental basis of the transaction."<sup>5</sup> It was previously the "rule that a contract could not be rescinded for a mutual mistake if it was a mistake of law. By and large, that is no longer true and it is of no critical importance whether a mutual mistake is one of fact or law."<sup>6</sup> The statutes allow reformation of contracts that do not "truly express the intention of the parties."<sup>7</sup> And this principle should be no less applicable to a case seeking rescission of a contract instead of its reformation.

**(c) Unilateral Mistake of Fact or Law**

Rescission is available when a unilateral mistake relates to the substance of the consideration, and it occurred despite the exercise of ordinary care, and enforcement of the mistake would be unconscionable, and the other party can be returned to the status quo ante contractus.<sup>8</sup> The Alabama Supreme Court very aptly described the law as to unilateral mistakes:

It has been declared that if, in the expression of the intention of one of the parties to an alleged contract, there is error, and that error is unknown to and unsuspected by the other party, that which was so expressed by the one party and agreed to by the other is valid and binding as a contract, which the party not in error may enforce. In other words, a party to a contract cannot avoid it on the ground that he made a mistake where there has been no misrepresentation, and there is no ambiguity in the terms of the contract, and the other contractor has no notice of such mistake and acts in perfect good faith. A unilateral error, it has been said does not avoid a contract. But this rule is by no means invariably applied

in the cancellation of contracts. It is said that mistake may be a good defense when hardships amounting to injustice would be inflicted on a party by holding him to his apparent bargain, and where it is unreasonable to hold him to it. However, a unilateral mistake in the making of a contract, of which the other contracting party is entirely ignorant, and to which he in no way contributes, will not affect the contract, or afford ground for its avoidance or rescission, unless it be such a mistake as goes to the substance of the contract itself. Not only must the mistake be material to the transaction, but the person who made the mistake must show, when he applies to an equity court for a rescission of the contract, that his mistake is not due to want of care or diligence, although the conclusion warranted by the best considered authorities is that mere neglect may not be a bar to the setting aside of the contract unless it is such as amounts to the violation of a positive legal duty and such as prejudiced the other party. What has been said applies only to cases in which one of the parties is entirely innocent of the other's mistake.<sup>9</sup>

If one of the parties, through mistake, names a consideration that is out of all proportion to the value of the subject of negotiation and the other party realizing that a mistake must have been committed, takes advantage of it and refuses to let the mistake be corrected when it is discovered, he cannot under these conditions claim an enforceable contract. Where there is a mistake that on its face is so palpable as to place a person of reasonable intelligence upon his guard, there is not a meeting of the minds of the parties, and consequently there can be no contract.

While the statutes allow reformation of contracts that do not “truly express the intention of the parties,” and while this principle should be no less applicable to a case seeking rescission of a contract instead of its reformation, it has been held that the statute does not authorize relief based upon the mistake of one party in absence of fraud or inequitable conduct.<sup>10</sup>

However, the doctrine of equitable rescission has no application in the field of public-works contracts. If a bidder on a public-works contract makes a mistake in preparing the submitted bid, the bidder can only either forfeit the bid bond and decline the contract as awarded or accept the contract. This is due to a statutory scheme<sup>11</sup> surrounding public-works contracts which supplants the equitable doctrine.<sup>12</sup>

#### (d) Invalidity of Contract

Although a void contract need not be rescinded, it is otherwise with respect to voidable contracts as where a contract is voidable because it was induced by fraud or was obtained by duress or undue influence or was executed under mistake. Of course, the exercise of a right to avoid a voidable contract operates as a discharge of such contract.<sup>13</sup> Alabama law follows this general rule and recognizes a distinction between void and voidable contracts as it relates to the equitable remedy of rescission.

As to voidable contracts, they can be rescinded. However, “there is a well-recognized limitation upon the right of rescission even in such cases. If there has been part performance of the contract,—that is, to such an extent that the *status quo* cannot be restored,—then no rescission can be claimed.”<sup>14</sup> Of course, this limitation equally applies to other contracts for which rescission is sought.

As to void contracts, if the contract is void, “there is no occasion for a rescission” because “there is nothing to rescind.”<sup>15</sup> Since there is nothing to rescind, a notice of an intent to rescind is not necessary.<sup>16</sup> “No presumption arises, under a contract void under the statute of frauds, that its nullifying defects will be waived by either party; and neither has a right



to assume that it will be by the other party. If the contract is void under the statute of frauds, there is nothing to rescind; the agreement, so long as it remains unexecuted, vests neither party with any legal rights as against the other.”<sup>17</sup>

As to illegal or immoral contracts, the law is, quite justly, harsh. “The law will leave all who share in the guilt of an illegal or immoral transaction where it finds them, and will neither lend its aid to enforce the contract while executory, nor to rescind it and recover back the consideration when executed.”<sup>18</sup> However, this statement of the rule presupposes “voluntary action on the part of both parties, and rests upon the assumption that they are equally at fault. The rule is therefore subject to the qualification that, if the payment has been extorted or induced by duress, oppression, or undue influence, it can be recovered back.”<sup>19</sup>

#### (e) Failure or Want of Consideration

A party's inability to perform a contract after it is made is, as a rule, a ground for rescinding it.<sup>20</sup> However, mere “inadequacy of consideration is not sufficient to authorize the cancellation of a contract.” “Nor will mistake in law or partial failure of consideration, in the absence of fraud, authorize the cancellation of a contract.”<sup>21</sup>

In cases that are subject to the Uniform Commercial Code, a different rule appears to control. The supreme court held that the tender of a check which was not honored by the drawee bank justified rescission of a contract.<sup>22</sup>

#### (f) Repudiation or Renunciation and Anticipatory Repudiation

An anticipatory repudiation, or repudiation before the time when performance is due, warrants rescission by the other party and a recovery upon quantum meruit as far as he or she has performed. However, an anticipatory breach of contract must be an unequivocal repudiation; a mere request for a change in terms or for cancellation does not constitute a repudiation.<sup>23</sup> Speaking of the right of rescission for breach of the contract, the supreme court used the following language:<sup>24</sup>

A contract is made by the joint will of two parties, and can only be rescinded by the joint will of the two parties; but one party may so wrongfully repudiate the contract as to authorize the other to renounce it and refuse to be longer bound thereby. This happens when the acts and conduct of one of the parties evinces an intention to no longer be bound by the contract. Merely because a given act or course of conduct of one party to a contract is inconsistent with the contract is not sufficient; it must be inconsistent with the intention to be longer bound by it. Every breach of a contract is, of course, inconsistent with the contract; but every breach by one party does not authorize the other to renounce it *in toto*.

#### (g) Breach of Contract

Where there is a contract involving mutual continuing duties on the part of both parties, and one party has breached, but has not repudiated, the contract, it is the duty of the other before rescission to give notice and opportunity to live up to the contract. A “slight or casual breach will not justify rescission.” However, the “inability of a party to perform a contract after it is made is, as a rule, a ground for rescinding it. The fact that substantial performance by one party is impossible or that a party is unable to perform a material part of the contract is a ground for rescission.”<sup>25</sup>

Under the Uniform Commercial Code, a party can revoke his acceptance of the goods that are the subject of the contract.<sup>26</sup> What constitutes revocation of acceptance within a “reasonable” time is judged on a case-by-case basis. And, the “continued use” of the goods “after revocation” may be “wrongful,” but it does not follow that such continued use constitutes an acceptance of the goods. Many cases involve extensive use of automobiles and motor homes after revocation. The appellate courts “emphasize the practical consideration that an individual who buys an automobile or a motor home may very well be unable, without extraordinary financial difficulty, to tender the automobile or motor home and do without it until the litigation concerning it is completed.”<sup>27</sup>

#### (h) Impossibility of Performance

The inability of a party to “perform a contract after it is made is, as a rule, a ground for rescinding it. The fact that substantial performance by one party is impossible or that a party is unable to perform a material part of the contract is a ground for rescission.”<sup>28</sup>

#### (i) Other Grounds

Other grounds for rescinding a contract that have been recognized by Alabama's appellate courts include unconscionability and failure of one party to use his or her best efforts to perform his or her duties under the contract.

Alabama law provides no implicit standard of unconscionability. Thus, each case must be considered on its own facts. “Rescission of a contract for unconscionability is an extraordinary remedy usually reserved for the protection of the unsophisticated and uneducated.” Unconscionability “relates to contract terms that are oppressive. It is applicable to one-sided provisions, denying the contracting party any opportunity for meaningful choice.”<sup>29</sup>

The supreme court held that an art firm “did not exercise its best efforts” to cause a limited-edition work to be printed so that the parties could approve and manually sign and number each print of the limited edition as soon as practicable and to sign a plate upon completion of the printing of the limited edition. This was based upon the Uniform Commercial Code<sup>30</sup> provision that when a time for performance is not specified, it is a “reasonable” time.<sup>31</sup>

Westlaw. © 2018 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

#### Footnotes

- 1 [Hillcrest Center, Inc. v. Rone](#), 711 So. 2d 901, 906 (Ala. 1997), as modified on denial of reh'g, (Nov. 14, 1997).
- 2 [Sheffield v. Andrews](#), 679 So. 2d 1052, 1053 (Ala. 1996). See also E. L. Strobin, Procuring signature by fraud as forgery, 11 A.L.R.3d 1076 (Originally published in 1967); *Am. Jur. 2d, Deeds* §§ 137, 139.
- 3 [Eaton v. Waldrop](#), 45 So. 3d 371 (Ala. Civ. App. 2010).
- 4 [Meyer v. Meyer](#), 952 So. 2d 384 (Ala. Civ. App. 2006).
- 5 *Williston on Contracts* § 70:125 at 612 (4th ed.), which was cited and quoted in [Meyer v. Meyer](#), 952 So. 2d 384, 391 n.4 (Ala. Civ. App. 2006). See also *Restatement Second, Contracts* § 152(1) (1981) (“Where a mistake of both parties at the time a contract was made as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of the mistake under the rule stated in § 154.”).
- 6 *Williston on Contracts* § 70:106 at 533 (4th ed.), which was cited and quoted in [Meyer v. Meyer](#), 952 So. 2d 384, 391 n.4 (Ala. Civ. App. 2006). However, see [West End Sav. Bank v. Goodwin](#), 223 Ala.



185, 135 So. 161 (1931) ("court will not reform a contract for a mere mistake of law," but "when the legal effect of the terms agreed upon by the parties to be employed in a written instrument, through a misapprehension or ignorance of their import, results in a contract different from that really entered into by them, the court of equity, in the exercise by its moral jurisdiction, will reform it").

Ala. Code § 8-1-2. See also *Clemons v. Mallett*, 445 So. 2d 276 (Ala. 1984) (One of the established grounds for reformation of an instrument is mutuality of mistake.).

Am. Jur. 2d, Contracts § 550.

Ex parte Perusini Const. Co., 242 Ala. 632, 635-636, 7 So. 2d 576, 578 (1942). See also *Strickland v. Rahaim*, 549 So. 2d 58 (Ala. 1989). 9 Ala. Code § 8-1-2. See also *Clemons v. Mallett*, 445 So. 2d 276 (Ala. 1984) (One of the established grounds for reformation of an instrument is mutuality of mistake.).

*American-Traders' Nat. Bank v. Henderson*, 222 Ala. 426, 133 So. 36 (1931).

See Ala. Code §§ 39-2-1 et seq.

*Clark Const. Co., Inc. v. State of Alabama Highway Dept.*, 451 So. 2d 298, 301 (Ala. Civ. App. 1984).

Am. Jur. 2d, Contracts § 548.

*Piedmont Land & Imp. Co. v. Piedmont Foundry & Machine Co.*, 96 Ala. 389, 11 So. 332, 333 (1892).

*Drinkard v. Embalmers Supply Co.*, 244 Ala. 619, 620, 14 So. 2d 585, 586-587 (1943).

*General Mills v. Carter*, 29 Ala. App. 299, 301, 195 So. 303, 304 (1940).

*Nelson v. Shelby Mfg. & Imp. Co.*, 96 Ala. 515, 11 So. 695, 700-701 (1892) (contract void under the Statute of Frauds need not be rescinded as long as it remains unexecuted).

*Berry v. Dunn*, 201 Ala. 275, 78 So. 51, 52 (1918).

*May v. Draper*, 220 Ala. 214, 124 So. 89, 90 (1929).

Am. Jur. 2d, Contracts § 564.

*Stephenson v. Atlas Coal Co.*, 147 Ala. 432, 41 So. 301 (1906) But see *Alabama Football, Inc. v. Stabler*, 294 Ala. 551, 554, 319 So. 2d 678, 682 (1975). ("While it is true that financial inability to perform '... whether due to ... poverty, (or) financial panic ...,' does not excuse nonperformance of a contract, it is equally true that: 'The inability of a party to perform a contract after it is made is, as a rule, a ground for rescinding it. The fact that substantial performance by one party is impossible or that a party is unable to perform a material part of the contract is a ground for rescission ....'")

*Coker v. Jackson*, 591 So. 2d 61, 63 (Ala. 1991).

Am. Jur. 2d, Contracts § 566.

*Birmingham News Co. v. Fitzgerald*, 222 Ala. 386, 133 So. 31 (1931), quoting *McAllister-Coman Co. v. Mathews*, 167 Ala. 361, 52 So. 416, 417 (1910).

*Alabama Football, Inc. v. Stabler*, 294 Ala. 551, 554, 319 So. 2d 678, 681-682 (1975).

Ala. Code §§ 7-2-602 to 7-2-608.

Ex parte Stem, 571 So. 2d 1112, 1113-1115, 13 U.C.C. Rep. Serv. 2d 1070 (Ala. 1990), rev'g *Braden v. Stem*, 571 So. 2d 1110 (Ala. Civ. App. 1989).

*Alabama Football, Inc. v. Stabler*, 294 Ala. 551, 554, 319 So. 2d 678 (1975), citing the predecessor of Am. Jur. 2d, Contracts § 564 (Am. Jur. 2d, Contracts § 506).

*Marshall v. Mercury Finance Co.*, 550 So. 2d 1026, 1027-1028 (Ala. Civ. App. 1989).

Ala. Code § 7-2-309.

*Jackie Fine Arts, Inc. v. Berkowitz*, 448 So. 2d 318, 321 (Ala. 1984).

**Tilley's Alabama Equity § 10:5 (5th ed.)**

Tilley's Alabama Equity June 2018 Update  
Ally Windsor Howell, LL.M.

Chapter 10. Rescission of a Contract

§ 10:5. Election of remedies in rescission actions

"It is well settled under Alabama law that a plaintiff may present alternative, inconsistent, and mutually exclusive claims to the jury."<sup>1</sup> However, the plaintiff may recover under only one of these claims.<sup>2</sup> "Generally speaking, the effect of rescission is to extinguish the contract. The contract is annihilated so effectually that in contemplation of law it has never had any existence, even for the purpose of being broken. Accordingly, it has been said that a lawful rescission of an agreement puts an end to it for all purposes, not only to preclude the recovery of the contract price, but also to prevent the recovery of damages for breach of the contract."<sup>3</sup>

When a person is induced to enter into a contract by fraud, "he has an election of remedies, either (1) to rescind the contract and sue for his money back, in which event he must give up possession of the property and restore all the benefits he received under it, or (2) affirm the contract, and sue for damages for the deceit, when he may retain the property, and its other benefits."<sup>4</sup> However, the supreme court has affirmed an award of punitive damages when the plaintiff rescinded a contract that was executed as a result of fraud in the inducement.<sup>5</sup>

Westlaw, © 2018 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

**Footnotes**

- 1 Sheffield v. Andrews, 679 So. 2d 1052, 1053 (Ala. 1996); Ex parte King, 591 So. 2d 464 (Ala. 1991).
- 2 Sheffield v. Andrews, 679 So. 2d 1052, 1053 (Ala. 1996); U. S. Fidelity & Guaranty Co. v. McKinnon, 356 So. 2d 600 (Ala. 1978).
- 3 Alabama Great Southern R. Co. v. Independent Oil Co., 230 Ala. 222, 160 So. 720, 722 (1935).
- 4 Hillcrest Center, Inc. v. Rone, 711 So. 2d 901, 906-907 (Ala. 1997), as modified on denial of reh'g, (Nov. 14, 1997).
- 5 Sheffield v. Andrews, 679 So. 2d 1052 (Ala. 1996).

---

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.